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Minority Territorial and Non-Territorial Autonomy in Europe: Theoretical Perspectives and Practical Challenges

The question of how to accommodate ethno-cultural diversity within liberal democratic states is one that has acquired a growing salience across Europe during the course of the past five decades. Political theory long adhered to the view that liberal democracy was something to be realised within the framework of a unitary nation-state based on a single undifferentiated political community of individuals. Although the civic/liberal vision of the nation was supposedly 'ethno-culturally neutral', the classic nation-state model also carried an implicit presumption of cultural homogeneity, whereby a single official language and overarching societal culture formed the basis for meaningful participation by all in public life.[1] This model reflected the experience of western European states – most notably France – where 'relatively strong, centralized monarchies emerged in pre-modern times, constituting sturdy political-cultural molds within which state-wide national identities eventually gelled, under the impact of homogenizing forces such as economic development and commercial integration, the bureaucratization of the state, the growth of public education, and the development of print media, electoral politics and the mass media.'[2]

This model of the culturally homogenous liberal democratic nation-state has, however, never been anything more than an ideal type, and its core assumptions have since the start of the twentieth century been challenged both theoretically and in practice by a more liberal pluralist vision which asserts the importance of public recognition and accommodation of ethno-cultural diversity within democratic societies. Advocates of liberal pluralism draw attention to the structural disadvantages faced by bearers of minority languages and cultures within the context of unitary nation states. Individual rights of non-discrimination, it is argued, cannot suffice to address these disadvantages. The notion of a single political community of equal citizens thus needs to be supplemented by the granting of additional specific national minority rights that can only be exercised collectively – for example, to cultural and educational facilities and to language use in the public sphere.

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[1] Kymlicka, W: Western Political Theory and Ethnic Relations in Eastern Europe. In W. Kymlicka and M. Opalski (ed.): *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe.* Oxford: Oxford University Press, 2001. 16-21.

[2] Roshwald, A: *Ethnic Nationalism and the Fall of Empires: Central Europe, Russia & the Middle East 1914-1923.* London: Routledge, 2001. 5.

The question of collective national minority rights assumed a particular importance after World War One in the new states that emerged out of the collapse of the Habsburg, Russian, German and Ottoman Empires. In this region, unlike in the western part of Europe, the pre-existing imperial context meant that nations had – with some exceptions – evolved as ethnic and cultural communities rather than political ones. Adopting national self-determination as one of its guiding principles, the postwar peace settlement sought to give each nation 'a state of its own'. This approach was, however, only selectively applied and would in any case have been impossible to realise in practice, so complex was the ethnically-mixed pattern of settlement within the region. All of the states that emerged were not nation-states in the western sense, but 'plural-society states' whose consolidation would require 'reaction to diverse political and national demands'.[3] The legacies of war and empire coupled with the deficiencies of the peace settlement meant that this pluralism became a ready source of political conflict. While one can point to some successes in the regulation of diverse national claims – most notably the Åland Islands settlement of 1921 – the League of Nations and its minorities protection framework proved unequal to the scale of the challenges it faced. While activists from the European Nationalities Congress argued consistently in favour of greater autonomy as a means of boosting minorities' identification with their states of residence, neither the League nor the governments of the region were willing to sanction any substantial dilution of the unitary and homogeneous nation-state model, despite the obvious problems arising from this in the context of Central and Eastern Europe.[4] In the wake of the renewed violent conflicts ultimately unleashed by growing nationalism, the concept of minority autonomy and minority rights more generally, disappeared from the European political agenda after World War Two, when international instruments again placed the accent on individual human rights as opposed to collective group provisions.[5]

This state of affairs was, however, subsequently challenged in a number of Western European countries by the emergence or revival of sub-state national movements advancing collectively-based claims for greater self-determination. Such claims gathered further momentum following the end of the Cold War, when the collapse of communist regimes and the start of the democratisation process paved the way for a revival of minority politics within the states of Central and Eastern Europe. More broadly, as Will Kymlicka observes, during the last five decades:

> 'we have witnessed a veritable revolution around the world in the relation between states and ethno-cultural minorities. Older models of assimilationist and homogenizing nation states are increasingly being contested, and often displaced by newer 'multicultural' models of the state and citizenship. This is reflected, for example, in the widespread adoption of cultural and religious accommodation for immigrant groups, the acceptance of territorial autonomy and of language

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[3] Berg, E.: Ethnic Mobilisation in Flux: Revisiting Peripherality and Minority Discontent in Estonia. *Space and Polity* 5 (2001) 6-7.

[4] Smith, D.J., and J. Hiden: *Ethnic Diversity and the Nation State: Cultural Autonomy Revisited*. London: Routledge, 2012.

[5] Jackson-Preece, J: *National Minorities and the European Nation-States System*. Oxford: OUP, 1998. 38-9.

rights for national minorities, and the recognition of land claims and self-government rights for indigenous peoples'.[6]

Against this background, autonomy has been increasingly advocated and practised as a template for accommodating minority rights claims without prejudicing the sovereignty and integrity of existing states. Autonomy as a model falls short of full ethno-federalisation of a state, yet it is generally taken to imply legally entrenched rights of self-government or self-rule rather than simply local self-administration.[7] While one can point to a wide spectrum of powers enjoyed by autonomous minorities, as a minimum one would expect to see an elected legislative body with competences in some basic domains, as well as an elected executive which implements this legislation. Devolution of power to minority bodies offers important guarantees against cultural assimilation while boosting minority representation and opening the way to greater participation in the public life of the state. However, autonomy does not in itself necessarily resolve all issues in the relationship between state and minority. For instance, it leaves open the question of minority representation and participation in institutions of central government. One can also point to examples of pseudo-autonomies, where limited cultural representation for minorities has formed part of a non-democratic regime based on principles of ethnic control rather than liberal democracy. In this regard the Soviet Union offers a case in point.

One can also distinguish two main bases for granting autonomy – territorial and non-territorial. In what follows I will discuss the pros and cons of each in turn, as well as the nature of the relationship between these two models. Under a system of territorial autonomy, rights to minority self-government are granted within the framework of a distinct sub-region of the state, which is typically identified as the historic homeland of a given group. The territorial unit in question is granted a special status which enables its residents to regulate their own affairs in particular domains. Here, the competences exercised by bodies of territorial autonomy would as a minimum generally extend to those areas necessary for the given minority group to maintain and develop its distinct cultural identity. This would typically mean that the relevant minority language has official status within the territory (generally alongside the majority state language); and that there is provision for education, cultural institutions and programmes, radio and television broadcasting and other media operating in the language. A territorial frame of autonomy, however, typically extends to additional measures of control sufficient to ensure the overall functioning and welfare of the autonomous unit. Here one can point to a wide spectrum of additional competences encompassing taxation, use and control

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[6] Kymlicka, W.: *Multicultural Odysseys: Navigating the New International Politics of Diversity*. Oxford and New York: Oxford University Press, 2007. 3.

[7] McGarry, J., and B. O'Leary.: *The Politics of Ethnic Conflict Regulation*. London: Routledge, 1993. 30-35., Benedikter, T.: *Territorial Autonomy as a Means of Minority Protection and Conflict Solution in the European Experience – An Overview and Schematic Comparison*. Bolzano: Society for Threatened Peoples, 2006.

of natural resources; health care and social services; transportation infrastructures and so on.[8]

There are, however, clear limitations to the model of territorial autonomy. Firstly, it cannot accommodate claims by national minorities which are not concentrated in a particular region but live dispersed across the entire territory of a particular state. Secondly, in so far as national and territorial boundaries are never entirely congruent, the establishment of autonomous territorial entities invariably leads to the creation of new minorities within the given unit. A democratic minority rights framework necessarily presupposes that the autonomous entity respect the individual citizen rights of its inhabitants, regardless of ethno-national affiliation. Yet, the autonomous authority may also be called upon to accommodate new claims for collectively-based rights advanced in the name of its own internal minorities. By extension, even where a minority bearing territorial autonomy is largely concentrated in the given region, at least some members of the relevant group will live in a dispersed pattern across the rest of the state. How then to provide for the needs of this 'diaspora' population?

These practical issues and challenges lead logically on to discussion of the non-territorial autonomy model, which was first elaborated in comprehensive fashion by the Austrian Social Democrats Karl Renner and Otto Bauer at the start of the twentieth century. Renner and Bauer's scheme was devised within context of the late Habsburg Empire, where competing national parties were advancing demands for self-determination in relation to particular territorial areas. Its aim was to accommodate these ethno-national differences within the framework of the existing Habsburg state and thus shift attention to more general issues of democratisation and class struggle

Renner and Bauer advocated transformation of the existing empire into a democratic multinational federation of nationalities, but they reasoned that this federation could not be constructed along territorial lines. While one could point to territories with a high degree of ethnic homogeneity, the mixing of different populations through internal migration meant that it would be impossible in practice to give each nationality a territory 'of its own'. The solution was therefore to separate the idea of nation from territory and allocate national rights according to what was termed the 'personality principle'. This aimed to

> 'Constitute the nation not as territorial corporation but as an association of persons. The national bodies regulated by public law would thus constitute territorial bodies only insofar as their efficacy could not extend ... beyond the borders of the empire. Within the state, however, power would not be given to the Germans in one region and the Czechs in another; rather, each nation, wherever its members resided, would form a body that independently administered its own affairs'.[9]

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[8] Benedikter, 2006.

[9] Bauer, O.: *The Question of Nationalities and Social Democracy*. Minneapolis and London: University of Minnesota Press, 2000. 281.

Renner and Bauer's original proposals for the Habsburg Empire envisaged a territorial division of the existing state into cantons, each with its own democratically elected council. Where cantons were nationally homogenous the council would be responsible for all aspects of public administration, including schooling and other cultural functions. However, in nationally mixed cantons the elected council would be supplemented by two or more public-legal bodies of national self-government, constituted on the basis of individual citizens freely determining their ethnicity and entering their names voluntarily onto a national register which was then used as a basis for electing the autonomous national body. These bodies would receive public funding from the state but would also have the power to levy additional taxes from those enrolled on the national register. Once constituted they would deal independently with education and other cultural tasks pertaining to the relevant ethnic group. The canton council, meanwhile, would be responsible for administrative tasks that carried a more 'nationally neutral' character. These parallel structures would then be replicated at the regional and central government levels. The scheme thus set out, in Renner's words, to:

> 'cut in two the sum of the activities of the state, separating national and political matters. We must organise the population twice; once along the lines of nationality, the second time in relation to the state, and each time in administrative units of different form'.[10]

Renner and Bauer's model was piloted in the context of the late Habsburg Empire and had a big impact on nationality debates in Tsarist Russia. Their vision of a democratic federation of nationalities was soon overtaken by events, as world war and revolution led to the collapse of the multinational empires of Central and Eastern Europe and their replacement by new sovereign nation-states in Central Europe and, further east, the Soviet Union – ostensibly a multinational state but one whose approach to the management of ethnic diversity was not only undemocratic but entirely territorially-based.[11] However, while non-territorial autonomy was never fully realised in its originally intended setting, it has since been applied in other contexts, with two broad trends discernible.

Firstly, NTA has been adopted as a means of catering for numerically small and territorially dispersed minorities living within unitary states. This was the case in the Estonian Republic of the 1920s, where the formerly dominant Baltic German minority (1.5% of the overall population) in particular argued successfully for the adoption of a 1925 law based on the Renner and Bauer model.[12,13] A further good example would be

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[10] Springer, R. (pseudonym of Renner, K.).: *Grundlagen und Entwicklungsziele der österreichisch-ungarischen Monarchie*. Vienna, 2006. 208.

[11] In giving each citizen a passport ethnicity, creating territorial autonomy for the larger ethnic groups but not supplementing this with non-territorial autonomy for more dispersed populations, the Soviet regime 'institutionalized both territorial-political and personal-ethnocultural models of nationhood as well as the tension between them' (Brubaker, R.: *Nationalism Reframed. Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press, 1996.).

[12] Smith and Hiden, 2012.

[13] This law was also adopted by Estonia's Jewish minority, which, like the German, was numerically small and territorially dispersed. It is notable that the inter-war Republic of Estonia was not established under the auspices of the peace settlement brokered by the western powers, but came into being on the basis of a separate treaty with

today's Hungary, where minority legislation based on NTA – first adopted in 1993 – appears particularly well-suited to the circumstances of the country's thirteen historic national minorities (constituting less than 10% of the total population).[14] Secondly, one can point to instances where NTA has been used to supplement pre-existing territorially-based arrangements for the management of ethno-national diversity, as is the case in Belgium, Canada and today's Russian Federation.

The concept of organising a national group as a community of persons rather than a territorially-based community raises its own particular issues and challenges, not least the question of how to define belonging to the group. In this respect, Renner and Bauer's principle of organising elections to a cultural council on the basis of free affiliation to a national register would clearly seem the most logical way to proceed. However, practical experience of NTA schemes – both historic and contemporary – suggests that persons belonging to minorities are not always comfortable with the requirement to publicly register their ethnic affiliation.[15] One alternative approach to setting up institutions of minority self-government is to allow all residents of a particular electoral district both to vote and to stand as candidates. This, however, opens up particular scope for so-called 'ethno-business', whereby political entrepreneurs are in some cases able to pass themselves off as minority representatives in order to gain public office, thereby giving rise to institutions that are not genuinely representative of the community in whose name they purport to operate.[16]

More generally, implementing NTA presupposes that a group is socio-politically cohesive enough to achieve the necessary internal consensus around the NTA model. This cohesion can be difficult to achieve, especially in the case of larger minority groups displaying a high degree of internal social differentiation. In such cases, it may prove impossible to attain NTA; alternatively, autonomous institutions might be established that do not incorporate a significant part of the given group. In the latter case, what provision is then to be made for those members of the minority who do not sign up to the national register?[17] Once again, the case of inter-war Estonia is instructive: the German

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Soviet Russia. This left more space for domestically conceived solutions in which the legacies of pre-revolutionary Russian debates on NTA played an influential role (Aun, K.: *On the Spirit of the Estonian Minorities Law.* Stockholm: Estonian Information Centre, 1950.). Latvia also adopted a slightly different form of non-territorial autonomy, while Lithuania also experimented with a Renner and Bauer-style model of NTA for its Jewish minority during the brief period of parliamentary democracy at the start of the 1920s (Smith and Hiden, 2012).

[14] Krizsán, A.: The Hungarian Minority Protection System: a Flexible Approach to the Adjudication of Ethnic Claims. *Journal of Ethnic and Migration Studies* 26 (2000): 247-262., Dobos, B.: The Development and Functioning of Cultural Autonomy in Hungary. *Ethnopolitics.* 6 (2007): 451-469.

[15] This was the case between the wars (see Krabbe, L.: L'autonomie culturelle comme solution du problème des minorités. Note de M. Krabbe au date du 18 Nov 1931. League of Nations Archive Geneva R.2175-4-32835.) and it is perhaps an even greater consideration in today's Europe, given inherited memories of how statistical data were employed to identity representatives of particular groups targeted for persecution during and after World War Two. On this debate in Hungary see Dobos, 2007.

[16] Dobos, 2007

[17] NTA normally operates on a simple majoritarian principle whereby at least 50% of the group in a given state or electoral district is required to register, and 50% of those registered are required to vote. Nevertheless the status of those left outside the register became a key issue in Estonia after NTA was established in the mid-1920s (See Smith and Hiden, 2012). By the same token, one factor hampering the implementation of a revived NTA law

and Jewish minorities that implemented non-territorial autonomy were numerically small, largely urban and well-educated and relatively prosperous. The Russian minority, by contrast, was large, predominantly rural, relatively poor and politically divided, with high rates of illiteracy amongst the rural population concentrated in Estonia's eastern border districts. While members of the local Russian-speaking elite argued consistently in favour of cultural autonomy, it proved impossible to achieve mobilisation around this or indeed any other concept of autonomy.[18] The Estonian constitution of 1920 provided for public use of the Russian language alongside Estonian in those areas where ethnic Russians made up more than 50% of the local population, while municipalities were also required to provide publicly funded minority language schooling wherever the parents of 20 or more children in the given district requested instruction in the relevant language. In the democratic context of the 1920s, most Russian political leaders were content to maintain this arrangement rather than pushing for more far-reaching autonomy.

For all of these issues and challenges, various functioning examples show us that NTA remains a workable proposition for groups that either seek autonomy but cannot realise it on a territorial basis; or possess territorial autonomy but require supplementary arrangements to cater for members falling outside the given territorial unit. Renner and Bauer, however, originally advocated NTA as a matter of principle, seeing it as a way of breaking the conceptual link between ethnicity and territory (and resultant inter-group territorial disputes) that were proving so problematic in early 20th century Europe. Similar arguments were advanced between the wars by the activists of the transnational European Nationalities Congress (which saw the Estonian model of NTA as a template for a broader pan-European system of minority autonomy) and one finds them again today in the work of political philosophers such as Ephraim Nimni, who maintain that territorially based approaches can never adequately resolve diverse ethno-political demands within states and that NTA should therefore be adopted as an overall guiding principle in this area.[19]

During recent years, arguments for applying non-territorial over territorial autonomy have also been advanced in specific relation to Central and Eastern Europe, where minority rights claims have been and remain a highly salient feature of post-communist political transformation. Here the case is not principled but pragmatic: it is argued that whereas territorial autonomy is appropriate to the long-established states and con-

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in today's Estonia (adopted 1993) is the country's policy of granting automatic rights of citizenship to pre-war residents but not to those who settled in the country during the Soviet period (deemed an illegal occupation): this has had the effect of dividing ethnic groups along lines of citizen and non-citizen, with the latter not deemed to be representatives of genuine national minorities and therefore not entitled to participate in the establishment of NTA institutions (see Smith, D.J.: Cultural Autonomy in Estonia. A Relevant Paradigm for the Post-Soviet Era? *ESRC 'One Europe or Several?'* Working Paper 19/01, 2000.).

[18] Smith, D.J.: Retracing Estonia's Russians: Mikhail Kurchinskii and Interwar Cultural Autonomy. *Nationalities Papers*, 27 (1999): 455-474.

[19] Nimni, E.: Nationalism, Ethnicity and Self-Determination: A Paradigm Shift. In K. Breen and S. O'Neill (eds.): *After the Nation? Critical Reflections on Post-Nationalism*, Basingstoke and New York: Palgrave McMillan, 2010. 21-37.

solidated democracies of the West, it is far less workable in a CEE context marked by historic disputes over territorial borders, continued geopolitical insecurities and recent or still ongoing processes of democratisation. These inherited communist and pre-communist legacies mean that governments in the region have been reluctant to endorse far-reaching territorial autonomy for national minorities, seeing this as a barrier to successful state-building and state consolidation or even as a potential threat to state integrity. Against this background, non-territorial autonomy has been mooted both by domestic and international actors as a less contentious and destabilising alternative that might help to advance the democratic minority rights agenda in the region.[20]

This argument, however, raises the question of whether representatives of the larger, more territorially compact national minorities that have mobilised within the region can agree to unite around an NTA model that offers possibilities for cultural self-government but no specific right to exercise other competences in relation to the particular area of settlement. The case of the Hungarian minority in Vojvodina – a quarter of million in size and compactly settled in the north of the region – proves that this is possible. In the case of Hungarians living in Romania, however, minority representatives have been internally divided over whether to pursue an agenda of non-territorial or territorial autonomy, suggesting that it would be difficult to establish fully representative institutions on the basis of the former approach.[21] More broadly, an article published by Will Kymlicka in 2008 claimed that while there may be some short-term strategic merit in pressing for non-territorial over territorial autonomy, it is 'unrealistic' to expect that minority claims in CEE could be deterritorialised entirely. This was because, in his words, 'the link between national identities and territory is very deep and is central to the self-understandings, histories and aspirations of national groups'[22].[23] As such, Kymlicka argued that non-territorial and territorial autonomy should be linked, 'as components of a broader package targeted at national minorities'; this, however, would be 'politically a difficult sell'[24] within the region. This is perhaps even more so from the standpoint of 2012, at a time when a number of western European states are confronted with secessionist demands on the part of sub-state national minorities possessing territorial autonomy.

Current debates within Central and Eastern Europe serve to underline the more general point that establishing any functioning autonomy – be it territorial or non-territorial – requires trust on the part of the actors involved as well as 'considerable po-

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[20] Kymlicka, W.: National-Cultural Autonomy and International Minority Rights Norms. In D.J. Smith and K. Cordell (ed.): *Cultural Autonomy in Contemporary Europe*. London: Routledge, 2008. 43-57.

[21] This state of affairs is mirrored to some extent in the case of Russians living in contemporary Estonia, where demands for territorial autonomy were articulated by elites in the country's heavily Russophone north-east during the early 1990s and can still occasionally be heard today (Smith, 2000; Smith: Narva region within the Estonian Republic: from autonomism to accommodation? *Regional and Federal Studies* 12 2 (2002): 89-110.).

[22] Kymlicka, 2008. 52.

[23] In this vein, the question also arises as to whether a state like contemporary Russia could, as part of an ongoing trend towards centralisation of state power, ever make NTA a default alternative rather than a complement to the system of territorial autonomy inherited from the Soviet period.

[24] Kymlicka, 2008. 54.

litical crafting'[25] within states. Externally, the process is greatly facilitated by a stable geopolitical environment and – where state and ethno-national borders overlap – by inter-state agreements between neighbouring countries grounded in commitment to existing territorial borders and respect of state sovereignty (this has been the case with the successful autonomies created in the Åland Islands and Süd Tyrol). It should also be remembered that autonomy and minority rights are ultimately an issue not of state stability but of democracy and of embedding ethnic identities within broader overarching civic-political identities. Ultimately, as an official of the League of Nations Minority Secretariat observed between the wars, its successful operation requires 'the development, in countries of mixed population, of a spirit of national tolerance and liberalism'.[26] This message was articulated powerfully by the Nationalities Congress of the 1920s and its leading luminaries such as the Latvian German Paul Schiemann, whose profound reflections on autonomy and democracy often appear startlingly relevant to today's European debates.[27] Their quest for autonomy proved fruitless in the unstable and divided Europe of the 1920s. Yet, for all of the challenges currently facing the EU and the wider Europe, today's post-Cold War context offers scope for greater optimism regarding the possibilities to advance the autonomy ideal.

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[25] Linz, J. and A. Stepan.: *Problems of Democratic Consolidation: Southern Europe, South America, and Post-Communist Europe.* Baltimore: Johns Hopkins University Press, 1996. 17.

[26] Krabbe, 1931. op. cit.

[27] Hiden, J.: *Defender of Minorities. Paul Schiemann, 1876-1944.* London: Hurst, 2004., Smith and Hiden, 2012