


## Accommodating National Diversity Within States: Territorial and Non-Territorial Approaches Since the Late 19th Century

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In 1922, Jacques Fouques-Duparc, a member of the French delegation at the League of Nations, described the need to find a way of reconciling “the personal character of national rights and the necessary territoriality of any form of administration” as one of the challenges facing the nascent minority protection regime” (Fouques-Duparc 1922, 43). Although Fouques-Duparc was referring to the specific issue of conceiving of an administration that was tailored to the needs of a particular nationality in regions that were nationally heterogeneous, his words captured a much more fundamental problem concerning not just the nation-state model but the accommodation of national diversity within states more generally. By distinguishing between the state’s administrative apparatus as something rigid and territorially bounded and national rights as something invested in groups of individuals and therefore much more transient, he pinpointed the incongruous relation between states as inherently territorial entities and groups of people conceived of as nations as more fluid and itinerant phenomena. This special issue sets out to explore the question of how this relation has been tackled and conceptualized by diplomats, legal scholars, as well as political thinkers and activists throughout the twentieth century in Europe and beyond.

The problem of how nationhood and statehood are differently territorially constrained and conditioned had exercised the minds of legal and political thinkers long before diplomats of the victorious powers of the First World War oversaw the reorganization of Europe into a continent of nation-states. In particular, in the multi-national Habsburg and Russian Empires, deliberations over the accommodation of national diversity within these states have resulted in a wealth of thought on the nexus of state, nation, and territory. Some legal scholars and political thinkers suggested following the modern nation-state paradigm and creating federal states based on ethnographic territorial units. Examples of this school of thought are František Palacký’s 1849 proposal for ethnic federation; Aurel Popovici and his plan for a *United States of Greater Austria*; Mykhailo Hrushevs’kyi’s vision of a federated Russia restructured along ethnographic lines; as well as Vladimir Lenin’s emphasis on the political self-determination of nations up to and including secession. Others promoted federalization on the basis of historical lands, such as Adolf Fischhof, who proposed an Austrian federation based on the Swiss model. For some, such as Mykhailo Drahomanov, the local commune and its voluntary union with other communes was the ideal organizing unit for the state and the nation. Others still were critical of federalism but open to the model of a decentralized state capable of maintaining the idea of a unitary, albeit possibly multilingual, political nation. József Eötvös comes to mind with his stress on the Hungarian traditions of municipal self-government – but also liberal Russian Constitutional Democrats, such

as Fedor Kokoshkin, who saw the benefits of administrative and legislative decentralization, which had also been a feature of the *zemstvo*, for minority languages and cultures.

Finally, there were those who emphasized the principal separateness of state and nation and proposed a form of national autonomy that was based not on territorial allegiances but on people and their personal sense of national belonging. Some of them came from a liberal position, including Hermann v. Herrnritt, Rudolf Laun, Mihály Károlyi, Simon Dubnov, and Boris Nolde. Others were Marxists, such as Etbin Kristan, Karl Renner, Otto Bauer, Vladimir Medem, Chaim Zhitlowsky, and Oszkar Jászi. But all of them considered non-territorial autonomy as an alternative way of accommodating national diversity within their respective empires. To complicate things even further, some of these thinkers changed their minds in the course of their lives, oscillating between various approaches or combining them. Palacký, for example, would come to exchange one territorial approach for another in defense of the indivisibility of the Bohemian lands. Both Dubnov and Drahomanov combined forms of non-territorial autonomy with strong local communities. Similarly, both Russia's Socialist Revolutionaries and Fischhof regarded non-territorial arrangements as a supplement to a federalization based either on historical lands, as Fischhof argued, or on ethno-territorial units, as the SRs proposed.

Despite the differences in the above-mentioned approaches, their advocates all had some understanding and sometimes personal experience of the risks of conflating the territoriality and sovereignty of states with those of nations. This holds true in particular for many of the above-mentioned thinkers from the Habsburg Empire, such as Eötvös, Renner, and Bauer, but also the legal scholars Ludwig Gumplowicz and Edmund Bernatzik. The work of these scholars prefigured the crux of what the geographer John Agnew would much later describe as the “territorial trap,” i.e., the conceptual error that regards “states as fixed units of sovereign space,” whose boundaries coincide with those of societies conceptualized as nations (Agnew 1994, 53). Realizing the fallacy of this assumption, many Habsburg actors promoted the so-called personality principle, which conceived of nations not as territorially bound entities but as associations of persons who share or believe to share a common language, culture, and history. The perhaps most precise definition of that principle was articulated in 1908 by Josef Lukas, a legal scholar at the University of Chernivtsi, who described it as the institution “of separate legal treatment based on nationality on one and the same territory,” and thus the same overall legal framework. Only in the administrative application of this common legal frame, individuals would be subject to either “a nationally separate status” or to “nationally separate organs” (Lukas 1908, 334, 359).<sup>1</sup>

Champions of the personality principle sought to break “the link between nationality, territory, and state, [...] whose logic” – as Michael Forman has aptly put – “is that of exclusivity, discrimination, and disintegration” (Forman 1998, 107). Out of this critique of the conflation of ethnicity and territory, nationhood and statehood grew the radically novel<sup>2</sup> idea of non-territorial national autonomy.<sup>3</sup> It was informed by the crucial insight that notions of statehood relied on territory to a much greater degree than those of nationhood; and it tended to conceive of nations as groups of people bound together not so much by territory, but by a shared sense of personal belonging and commitment to a national community born out of a community of language and fate (Bauer [1907] 2000, 99–119). The arguably best-known advocates of “national autonomy based on the personality principle” were the Austrian Social Democratic leaders Renner (1902) and Bauer (1907). Conceived originally as a model for consolidating the unity of the Habsburg empire while accommodating the cultural needs and aspirations of its nationalities, it has come to serve as a common reference point for various non-territorial approaches up until this day.

In contrast to the disentanglement of the notions of nationhood and territory that underpins the idea of non-territorial autonomy, the link between territory and statehood is more difficult to break. The two are intertwined in ways that are hard to dismiss, as is reflected in many modern definitions of the state, including Georg Jellinek's tripartite definition of it as state territory, state population, and state authority (Jellinek 1905, 381–420).<sup>4</sup> Modern states exercise authority through systems of administration that are typically territorial and reliant on what Robert Sack has described as

territoriality, i.e., the constant effort to delimit and control territory (Sack 1983, 56).<sup>5</sup> Part and parcel of the effort to employ territoriality to a state's territory is the categorization of its population. One such category is nationality. Together with matters associated with it, such as language use or schooling, nationality has more often than not been conceptually and administratively linked to a certain territory within the state. By contrast, other categories that have been used by states and societies to classify people, such as income, gender, religious affiliation, or marital status, have tended to be understood in a less territorial manner. These categories do of course correlate to territory – just think of wealth being concentrated in certain parts of a country or city. But they are not commonly seen through a territorial prism, nor do they usually form the basis of a territorial administrative unit (as nationality often does). Instead, they have generally been conceived of in non-territorial terms. Even though for the category of nationality this has been the exception rather than the rule, the fact remains that the history of accommodating national diversity within states has seen both territorial and non-territorial approaches being pursued by a variety of majority and minority actors. This special issue sheds light on important moments in this history and on the strategies and motives of some of its main protagonists.

We acknowledge that territoriality crucially constrains and conditions any attempt by a state to accommodate national diversity, and that non-territorial and territorial approaches in this context are intertwined.<sup>6</sup> It is often overlooked, for example, that even the Austro-Marxist model – widely regarded as the ideal type of non-territorial autonomy – clearly combines territorial *and* non-territorial elements of national self-rule. Likewise, the personality principle as applied by modern states to accommodate national diversity has always been territorially embedded.<sup>7</sup> That said, this special issue proceeds from the premise that it makes sense to analytically distinguish between non-territorial and territorial approaches to national autonomy. Rather than setting up a dichotomy, it draws a spectrum of approaches that are territorial or non-territorial to varying degrees. Rather than stressing the difference between the two, it studies the interplay between them.

Bringing together contributions by eight authors, this special issue traces the history of both territorial and non-territorial approaches towards the accommodation of national diversity. It highlights the respective limitations, pitfalls, and advantages of each approach and often analyzes their entanglement. The contributions by Tatiana Khripachenko and Dagmar Wernitznig ask what the lives and careers of legal scholars or political activists can tell us about the genesis of some of these approaches towards national diversity. Mart Kuldkepp, Jonathan Raspe, Martin Klatt, and Oskar Mulej embark on country-specific case studies that examine how non-territorial and territorial autonomy have fared in their respective national contexts. Jana Osterkamp and Yonatan Fessha take a broader comparative approach between countries and empires to find out how wider regional and historical contexts have favored the emergence of specific approaches to the accommodation of national diversity and to the territorialization of the state.

The special issue opens with a contribution by Jana Osterkamp who explores the historical interplay between territories, spaces, and loyalties in the 19th century through the lens of the Habsburg experience and with a comparative eye on China, the United States, and the Russian Empire. While the Habsburg Empire has received much attention as a laboratory of nations, its role in engendering political territories and equipping them with a modern administration has been relatively neglected. Osterkamp redresses the balance by examining and rethinking both processes as they simultaneously unfolded during the second half of the 19th century. She highlights the multiplicity of entangled loyalties that were the result of the complex relationship between the Habsburgs' centralizing aims, the particularism of historical provinces, and imperial Austria's dual role as a multi-ethnic empire and a member of the German Confederation.

Yonatan Fessha's paper addresses a challenge that is very different but not entirely incomparable to the Habsburg one of having to negotiate the simultaneous consolidation of both nations and political spaces within the imperial state. Although set in the entirely different geographical and temporal context of the Horn of Africa during the second half of the 20th century, Fessha's paper examines how the governments of Ethiopia, Somalia, and Sudan have tried to prevent the

disintegration of their states by providing territorial autonomy through federalization and decentralization in an attempt to accommodate ethnic and religious diversity and other potential sources of communal tension. Fessha highlights the benefits and disadvantages of these attempts and chronicles the challenges accompanying their often undemocratic implementation.

Federalist designs for the accommodation of national diversity are also the subject of Jonathan Raspe's article, which is a study of Jewish territorial autonomy in 1920s Soviet Ukraine. The article exposes the limitations of the otherwise ambitious Soviet nationalities policy of that decade. Rigidly territorial and assuming a fixed and essentializing link between "nation" and "national language" (Yiddish in the case of Soviet Jews), the Soviet federalist model was unable to account for the far more complex and heterogeneous reality, which ultimately aggravated rather than mended ethnic relations between national minorities. According to Raspe, this failure to provide adequate Jewish autonomy prefigured the future mismatch between the fixity of Soviet territorial autonomy and the increasingly mobile and transnational society of the 1960s and 1970s.

Picking up on the issue of mobile populations and transient patterns of settlement, Martin Klatt argues in his paper that these pose a challenge not just to territorial but also to non-territorial forms of national autonomy. Klatt focusses on the Danes of the Southern Schleswig as a national minority whose settlement patterns have become less territorially compact during the 20th century. He shows that while the Danes have moved, the territorial extent of their non-territorial autonomy has not. This raises the question of whether non-territorial autonomy can ever really disconnect from the notion of territory, and whether even this model of autonomy remains caught in the so-called territorial trap. Changing social structures and practices and corresponding new migration patterns – Klatt suggests – can render territorially limited non-territorial arrangements effectively obsolete over time.

Mart Kuldkepp's contribution to this special issue continues this thread of examining what non-territorial autonomy meant in practice. By looking at the case of Estonia's tiny Swedish minority and at the work of its leader Hans Pöhl (1876–1930), the article brings forward the example of a territorially compactly settled national minority that campaigned for what it referred to as cultural autonomy. The term later became synonymous with the non-territorial model advocated by the Estonian Germans, with whom Swedish politicians aligned for strategic reasons. According to Kuldkepp, the demand for cultural autonomy played an important role in providing Estonian Swedish nationalism with a political purpose. Once it was met in the form of the 1925 Estonian nationality law, Swedes saw that law and the autonomy it provided as an achievement "of their own." Its political importance notwithstanding, the nationality law's non-territorial emphasis made it unsuitable for their needs.

Oskar Mulej's article studies another case of a compactly settled, yet numerically strong national minority, opting for a non-territorial platform. The case of the Sudeten German Party in late 1930s Czechoslovakia shows not only the adaptation of national autonomy to a far-right agenda, but also the simultaneous intertwinement of elements of both territorial and non-territorial autonomy in pursuit of a maximalist model of national self-rule. Whereas in practical terms, the Sudeten German Party demands aimed primarily at instituting territorial autonomy for the majority German-speaking regions of Czechoslovakia, a closer look at their inner logic and intellectual origins reveals an essentially non-territorial underpinning.

The final two contributions to this special issue open up our inquiry to the arena of international law and diplomacy. Tatiana Khripachenko's article traces the fate and efforts of the Russian émigré legal scholar André Mandelstam (1869–1949) toward devising an internationally binding system of minority protection and non-territorial autonomy. Mandelstam's project to balance the collective cultural rights of minorities with the unity of the state underwent numerous revisions, the end point of which was firmly located in the domain of individual human rights. In presenting this development, Khripachenko makes a valuable contribution to the history of how international law has dealt with the political status of national minorities – diasporas and refugee communities

included – and with the delicate relationship between state sovereignty and the need to protect minority rights.

The arena of international politics and law is also the focus of Dagmar Wernitznig's exploration of the life and work of Sarah Wambaugh (1882–1955). An international legal scholar and advisor to the League of Nations, Wambaugh was a prominent expert on, and witness of, plebiscites about contested territories throughout the world. These included the post-WWI border-settling in Carinthia and Sopron/Ödenburg, the attempted plebiscite in the Tacna and Arica provinces claimed both by Peru and Chile, as well as the 1935 plebiscite in *Saarland*. Wambaugh's reflections on these plebiscites, particularly the Carinthian one, demonstrated her awareness of the multiplicity of factors other than national identification, particularly gender-related ones, that affected people's decision-making process.

The Habsburg and Russian Empires and their post-war successor states clearly have special, paradigm-setting significance for the subject matter of this special issue.<sup>8</sup> It is thus perhaps unsurprising that more than half of our contributions deal with topics that are placed within or are otherwise connected to these historical spaces. That said, while the imperial and post-imperial Habsburg and Russian experience of, and strategies toward, national diversity have been unique, they also mirror what have been global phenomena. This is why this special issue goes beyond the Habsburg and Russian as well as Soviet contexts to include contributions that speak to the African and West European contexts as well as the arena of international minority protection. Covering these diverse geographical areas and employing a range of theoretical and methodological approaches, all articles in this special issue revolve around the challenge of adjusting relatively rigid and territorially bound forms of statehood to the more transient, fluid, and much less territorially determined manifestations of nationhood throughout the late 19th and 20th centuries.

Irrespective of the frequent nationalist claims to nationally homogenous territories or historical homelands, national heterogeneity has tended to be the norm rather than the exception, as is attested even today by the ubiquity of stateless nations and national minorities within nation-states all around the globe. Consequently, attempts to accommodate national diversity have always needed to negotiate the tension between the fundamental territorial nature of statehood and the much less territorial and more personal and elusive nature of nationhood. This special issue traces the intellectual and actual footsteps of those involved in this negotiation – including legal and political thinkers, civil servants, minority spokespersons, politicians, diplomats, revolutionaries – and asks what strategies (territorial or non-territorial) they adopted and to what end. By doing so, we aim to show how notions and norms that conflate statehood and nationhood have historically evolved.

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## Notes

- 1 Lukas actually saw the development of legal provisions, acknowledging the multinational character of the Habsburg Empire largely in terms of “slow but steady advance of the personality principle and, correspondingly, a gradual decline in the importance of the territoriality principle” (Lukas 1908, 334).
- 2 When referring to the idea of non-territorial national autonomy as radically novel, we do not negate the existence of early-modern forms of non-territorial autonomy, such as the Ottoman *millet* system or the *Unio Trium Nationum* in Transylvania. As the scope of the special issue suggests, “novel” refers to the context of modern and highly bureaucratized states with a legal system based on the idea of the equality of citizens, and with an understanding of national



- autonomy based not so much on religion or estate but on ethnicity (mainly seen through the prism of language).
- 3 According to David Smith (2014, 21), “Renner and Bauer originally adopted NTA as a matter of principle, seeing it as a way of breaking the conceptual link between ethnicity and territory.” For a recent definition of non-territorial autonomy and of the international legal practice of (non-)territoriality from the perspective of comparative law, see Suki (2015).
  - 4 For a detailed study on Jellinek’s understanding of statehood, see Kersten (2000). Jellinek’s definition was later echoed by Claude Raffestin, who characterized the state as “population, territory and authority” (Raffestin [1980] 2019, 45). The entanglement of the notions of territory and statehood has also been noted by Stuart Elden, who builds on the work of Paul Allié to argue that the state and territory tend to reify and reinforce each other. According to Allié, “territory always seems linked to possible definitions of the state; it gives it a physical basis which seems to render it inevitable and eternal” (quoted in Elden 2013, 7). Last but not least, even Max Weber’s definition of the state as a *human community* that successfully claims the monopoly on the legitimate use of physical violence in a delineated territory cannot dispense with territory (Weber [1921] 1980, 821–825). On the interplay between Jellinek and Weber, see Breuer (2004, 89–112).
  - 5 Robert Sack defined territoriality as “the attempt by an individual or group (x) to influence, affect, or control objects, people, and relationships (y) by delimiting and asserting control over a geographic area. This area is the territory” (Sack 1983, 56). The crucial understanding that modern state authority originates of the pervasion of space through administration, which is thus inherently territorial can be found with Renner (1918, 95–99) but also with the Bohemian German legal scholar Heinrich Rauchberg; see Danzer (1908, 107–109).
  - 6 As John Coakley as rightly pointed out, a false dichotomy is sometimes created between territorial and non-territorial autonomy, which presents the former as flawed and prone to cause ethnic conflict, and the latter as the panacea for such conflict (Coakley 2016, 166–185).
  - 7 Tellingly, Lukas distinguished between the historical “principle of personality of law” and the modern legal concept of “personality principle,” which was part of territorially delimited law (Lukas 1908, 359–363).
  - 8 David Smith has recently highlighted the importance of this region for the development of various approaches to accommodate national diversity (Smith 2020, 224).

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