The Revival of Cultural Autonomy in Certain Countries of Eastern Europe: Were Lessons Drawn from the Inter-War Period?

David J. Smith

(Professor of Baltic History and Politics, University of Glasgow, UK)

CRCEES Working Papers, WP2008/06
The concept of non-territorial cultural autonomy (also known as National Cultural Autonomy - NCA) was originally devised at the turn of the 20th century by the Austrian Social Democrat Karl Renner, as a response to the specific circumstances that obtained within the Habsburg Empire at that time. Rising calls for self-determination on the part of the Empire’s subject nationalities posed a growing challenge not just to the imperial authorities, but also to those liberal and socialist thinkers like Renner who were seeking to realise democracy and social equality within the existing territorial boundaries of the Habsburg state. In an effort to satisfy these demands, Renner and his fellow Social Democrat Otto Bauer advocated the transformation of the Empire into a genuine democratic federation of peoples. Renner and Bauer also understood, however, that in the context of Central and Eastern Europe, such a federation could not be constructed solely on a territorial basis. So complex was the region’s ethnic mix that it would be impossible to achieve complete congruence between political and national boundaries. Any effort to resolve the ‘national question’ on this basis would be doomed to failure.

For this reason, Renner and Bauer insisted on the need for a separate, non-territorial means of realising national self-determination that would act as a complement to a system of territorial federalism and would cater specifically for the cultural needs of persons living as minorities in a national territorial unit other than their ‘own’. Under their NCA scheme, representatives of national groups would be allowed to set up public corporations and elect their own cultural self-governments. Once constituted, these institutions could assume full control over schooling in the relevant language and other issues of specific concern to the group. The jurisdiction of the aforementioned bodies would not be confined to particular territorial sub-regions of the state, but would extend to all citizens who professed belonging to the relevant nationality, regardless of where they lived. Herein lies the main novelty of the NCA scheme - the ‘personality principle’, which holds that ‘totalities of

---

1 This seminar is partly funded by the UK Arts and Humanities Research Council (AHRC) as part of a broader project headed by John Hiden and David Smith at the University of Glasgow on the Quest for Cultural Autonomy in Inter-war Europe. The author gratefully acknowledges the support provided by the AHRC for this enterprise. For a preliminary overview of findings from this project, see John Hiden and David J Smith, ‘Looking Beyond the Nation State: A Baltic Vision for National Minorities between the Wars’, Journal of Contemporary History, vol. 41, no.3, July 2006, pp.387-400; David J Smith, ‘Non-territorial Cultural Autonomy as a Baltic Contribution to Europe between the Wars’ in David J Smith (ed.), The Baltic States and their Region: New Europe or Old?’, Amsterdam, Rodopi, 2005, pp.211-226.
persons are divisible only according to personal, not territorial characteristics’.2

Also notable in this respect was Renner’s insistence that belonging to a particular national group was not an innate characteristic conferred by birth, but rather a matter of personal choice. In this regard, membership of the public corporations was to be determined on the basis of individuals freely determining their ethnicity and voluntarily enrolling on a national register. Those signing up in this way would be eligible to elect the representatives of the cultural self-government. Under the scheme, the state and municipal authorities would continue to provide the bulk of funding. Those enrolled on the national register, however, would also be liable to pay cultural taxes to the corporation. Anyone unwilling to fulfil this added obligation in return for additional cultural rights would be free to withdraw from the respective national register; similarly, those who decided that they wanted their children to be educated in another language would be free to withdraw from one register and enrol on another.

For Renner, this conception of nationality was consistent with the spirit of democracy, and served to differentiate his proposed national bodies from pre-existing corporate structures based on more organic, exclusivist and hierarchical conceptions of group belonging. Judged by the standards of today’s Europe, Renner’s scheme also appears consistent with the terms of the Council of Europe Framework Convention on National Minorities, which stipulates that minority rights cannot be given to groups, but only to ‘persons belonging to national minorities’, who may exercise these rights both individually as well as in community with others.3

A lawyer by training, Karl Renner can be seen as one of the original pioneers of democracy through law. He believed that through a comprehensive legal regulation of the nationalities question, it would be possible to take culture out of politics and engineer a shift towards ‘a more progressive agenda of political action unhampered by nationalist division’.4 Although devised with specific regard to the Austrian case, Renner and Bauer’s ideas quickly attained wide currency within tsarist Russia. Here, non-territorial cultural autonomy proved to be of particular interest to the territorially dispersed Jewish communities of the western borderlands. Thinking on cultural autonomy also exerted an important influence on the development of the Baltic national movements. By the last decade of tsarist rule it had also

3 Article 3 Paragraph 1 also ‘guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such’. Framework Convention for the Protection of National Minorities and Explanatory Report. http://www.coe.int
4 John Schwarzmantel in Nimni (ed), p.64
penetrated Russian liberal and socialist circles, finding its way onto the agenda of the Constitutional Democrats and the Socialist Revolutionary Party.

Prospects of realising Renner and Bauer’s vision of a multinational federation ultimately disappeared during 1914-20 as the turmoil of war and revolution brought about the demise of the Habsburg and tsarist states. The New Europe that emerged from World War One, however, simply confirmed Renner and Bauer’s contention that it was impossible to solve the national question solely on the basis of territorial adjustments. The new Union of Soviet Socialist Republics that encompassed the bulk of the former tsarist empire embraced cultural pluralism during the 1920s, yet in no way corresponded to Renner’s vision of a genuinely democratic federation. The Communist Party not only possessed a top-down monopoly on political power, but also explicitly rejected Renner and Bauer’s personal principle, opting instead for the creation and institutionalisation of sub-national territorially-based identity.

The successor states that emerged elsewhere in Central and Eastern Europe provided vehicles for the national self-determination of several of the larger nationalities. However, in many ways these states simply replicated the problems of the old empires in miniature, since all contained significant minority populations. In an era of rising national consciousness, these minorities were in many cases ill-disposed to pursue the route of voluntary linguistic and cultural assimilation with the majority nationality. This paved the way for tensions between the new states, their minorities and ‘external national homelands’ – states which claimed the right and obligation to defend the interests of ethnic kin living as minorities in neighbouring states.

This latent conflict gave impetus to efforts by the League of Nations to institute protection for the rights of national minorities, through treaties with the new successor and the system of petitions to the League Council. The guiding principles of the League, however, enshrined the sanctity of indivisible state sovereignty. The treaties stipulated that minorities were to enjoy equal rights as citizens, plus the right to practise their own culture. Yet any suggestion of allowing minorities to create public-legal institutions as an intermediary between the state and the individual was firmly eschewed, on the grounds that this might create ‘states within states’ and fuel demands for territorial revision.

The League system for supervision of the treaties, meanwhile, was largely toothless. Petitions from minority representatives were referred in the first instance to a specially established Minorities section within the League Secretariat. If this found the complaint to be justified, it referred it on to a
minority committee consisting of three members nominated by the council of the League. This committee sought to resolve the issue through consultations with the state accused of having defaulted on its minority obligations. If this failed, the committee could refer the matter to a meeting of the full league council, where the accused state was invited to take a seat and given voting rights. Since council decisions required a unanimous vote, it was impossible to impose any decision that was not wholly acceptable to the state concerned.

In reality, though, only a small minority of the complaints that were made actually got as far as a meeting of the League Council. 325 complaints were taken up by minority committees during the period of the League, but of these only 14 went forward to the Council. In most cases, complaints led to compromises being hammered out between the minority section and the government concerned.

Thus, as one author rightly observes: ‘Although the relationship between the states concerned and their minorities was internationalised by the League guarantee and was thus no longer a purely domestic affair, the minority protection procedure itself was essentially a political procedure, in which the sovereignty of the states was scrupulously respected and safeguarded. The petitioner stood as a source of information only. Once he had submitted his petition, he was left wholly out of the procedure’. 7 Minority observers suspected, with good reason, that the League had no interest in promoting a new multicultural vision of statehood in the region. Rather, it regarded minority rights as a short-term expedient, and expected that in the longer-term, minorities would assimilate linguistically and culturally with the majority nationality of their particular state, and that a system of stable, Western-style nation-states based on the principle of one nation - one language, would emerge. 8

INTER-WAR EXPERIMENTS WITH CULTURAL AUTONOMY

The NCA principle, however, did resurface within the new setting of post-war Europe. It was implemented to varying degrees by the Baltic states – which were created independently of the Versailles peace settlement - and most notably by Estonia, whose 1925 law on cultural autonomy for national minorities was unique in Europe at that time. Under the terms of this law, representatives of Estonia’s Russian, German, and Swedish minorities (and other nationality groups numbering at least 3,000) were given the possibility to establish their own public-legal corporations and, on this basis, elect cultural self-governments. These institutions were established on the democratic basis envisaged by Renner and Bauer: representatives of a particular minority seeking to implement autonomy had first to enrol at least half of the adult

7 Dirk Crols, “Old and new minorities on the international chessboard: from League to Union” in Smith (ed) The Baltic States and their Region: New Europe or Old?, p.188.

8 Hiden and Smith, ‘Looking Beyond the Nation State’, p.388.
members of the relevant group onto a national register (the right to membership being determined on the basis of a citizen electing to enter the relevant nationality on his/her passport). Once the national register had been drawn up, its members were called upon to elect a Cultural Council of between 20 and 60 members, which could only be constituted if 50% of registered voters participated in the election. If a council could be established, a two-thirds majority vote by its members was then required in order formally to adopt cultural autonomy. Only if these hurdles were overcome could minority representatives proceed to elect the executive organs of cultural self-government at central and local level.

Thus, as one author has remarked, the constituency of minority cultural self-governments in Estonia derived from “the deliberate personal will of individual nationals living within the state territory.”9 Under the terms of the Estonian constitution (which stipulated the each citizen was free to choose and change his/her nationality) and the 1925 law, a national minority group was defined as a community of language and culture to which anyone could adhere, regardless of ethnic origin. By the same token, the public corporation became akin to a ‘daily plebiscite’, in that anyone unwilling to subscribe to the terms of membership could simply withdraw, without renouncing his/her passport nationality. If the number enrolled on the national register fell below 50% of the total number of citizens declaring a particular nationality, the state had the right to abolish the institutions of cultural autonomy.

The 1925 law was promptly implemented by Estonia’s German and Jewish minorities during 1925-26. The non-territorial nature of the legislation was especially significant to these groups, which were both numerically small and territorially dispersed in terms of their settlement. This meant that unlike, for instance, Estonia’s large and territorially compact Russian minority, they were unable to realise minority rights through existing, territorially-based local government.10 Once constituted, the German and Jewish minority self-governments were able to assume full responsibility for the organisation, administration and control of public and private schools operating in the mother tongue of the relevant minority, as well as for the supervision of minority cultural institutions and activities more generally. The NCA scheme raised a host of practical issues that took a number of years to work through. For all the talk of NCA taking culture out of politics, the limits and scope of cultural self-government will inevitably be the object of contestation, and this was certainly the case in 1920s Estonia – how, for instance, was one to determine the nature of the history curriculum taught in autonomous

10 The Estonian constitution of 1920 stated that wherever there were 20 pupils speaking a particular language, the state was obliged to offer publicly-funded schooling in that language. It also stipulated that in areas where a minority group made up more than 50% of the local population, the relevant language should serve as a second official language alongside Estonian.
German-language schools? Such issues could only be resolved through a process of dialogue and negotiation between the institutions of German autonomy and the state, which retained broad powers of supervision and regulation over minority schools.\textsuperscript{11}

It must be said that at the outset, many Estonian Germans harboured deep suspicions towards the concept of cultural autonomy. The very novelty and complexity of this scheme meant that even its firmest advocates saw it as a step into the unknown. For some more conservative/nationalist Germans, moreover, NCA clearly represented ‘little more than an appreciation of politics as the art of the possible’.\textsuperscript{12} These groups had argued consistently for a more far-reaching form of self-government that would have encompassed social welfare and even a distinct legal system, but they ultimately deferred to those more liberal circles that recognised the need to work in partnership with the Estonian state. In the course of 1925-28, the German cultural self-government proved highly successful in establishing a single, streamlined German school network and a system of graduated cultural taxation that was levied on members of the cultural corporation. The establishment of autonomy did not in itself eradicate all outstanding points of contention between the German minority and the state (I return to this point below); nevertheless, by 1930, commentators on both sides were expressing the view that it had gone a long way towards reducing tensions arising from the tsarist period and the agrarian reform of the early 1920s.

It is hardly coincidental that in the same period, NCA also became the guiding principle of the European Nationalities Congress, which was formed in 1925 under the auspices of German minority activists from Estonia and Latvia. In the 1930s, the Nationalities Congress would be transformed into an instrument of Nazi German foreign policy, which exerted its control via the Verband der Deutschen Volksgruppen that by now had the dominant place within the wider organisation. In light of this fact, the existing literature has tended to highlight the predominance of German groups within the Congress right from its inception, and the fact that the German Foreign Office provided the bulk of the organisation’s funding already during the late 1920s. There is therefore an implication that from the very outset, the Congress was no more than a Trojan Horse for German ‘homeland nationalism’ and revisionist foreign policy aims.

That völkisch German nationalists were present within the NC right from the start is undeniable. However, to see the organisation uniquely in these terms would be a gross misrepresentation of the character which it assumed during the initial period of its existence in the late 1920s. Although Germans from the

\textsuperscript{11} Autonomous institutions were thus bound by certain national regulations laid down by the Ministry of Education, including a stipulation that the Estonian language be taught as a compulsory subject.

\textsuperscript{12} Aviel Roshwald ‘Between Balkanization and Banalization: Dilemmas of Ethno-Cultural Diversity’, forthcoming in Ethnopolitics, September 2007.
Baltic States and Romania were instrumental in setting up the Congress, it was far from being a purely German affair, encompassing representatives of 19 minorities from 15 states in both Eastern and Western Europe. More significant was the thoroughly liberal spirit which permeated the Congress agenda during the first six or seven years of its activity. Contrary to fears initially expressed by League representatives and state governments, it did not set out to overturn the post-war settlement of European affairs, but rather to place this settlement on more secure foundations. From the outset, the Congress declared its commitment to maintaining the new or reduced states of Central and Eastern Europe within the frontiers established under the peace settlement. Discussion of border revision was explicitly prohibited at Congress meetings, as were attacks on the policies of individual governments. Rather, the focus was on developing general principles of minority protection.

Here the Congress argued that in constitutional terms, it was not enough merely to stipulate – as the League of Nations did – that each individual had the right to maintain his or her nationality. Only full cultural autonomy, granting minorities the status of legal corporation, would be enough to forestall the spectre of assimilation. In response to the inevitable charge that this would give rise to a ‘state within a state’, Congress leaders reiterated many of the arguments that had previously been made in relation to the Estonian law on cultural autonomy: the competences of the envisaged minority corporations would be expressly confined to culture; moreover, these competences were expressly delegated to the minority corporations by the state, which continued to provide most of the funding and exercise oversight and right of veto in certain circumstances. Finally, in response to claims that cultural autonomy would give minority representatives additional privileges compared to other citizens of the state, the advocates of autonomy reminded their accusers that additional rights also entailed additional responsibilities, not least the obligation to pay supplementary taxes to the relevant minority corporation.

In short, Congress leaders argued that ‘states within’ were more likely to arise in those countries that did not adequately respect the cultural rights of national minorities. In their view, constitutional guarantees of cultural autonomy would remove any potential conflict of interest between membership of an ethno-national minority and membership of a wider state community. Indeed, it was argued that the primary loyalty of each individual must necessarily be to the state community of which one forms part. To underline this point, the initial declarations of the Nationalities Congress included a stipulation that all individuals belonging to minority groups should have the right and the obligation to learn the majority language, which was to remain the sole official language of central government in the new nation-states created by the peace settlement.

For Paul Schiemann, the Latvian German Vice-Chairman of the Congress from 1925-32 and liberal ‘thinker of the inter-war Minorities Movement’,
‘politics entailed “work for the good of the place one inhabits. Any diversion to other ends is suicide”... Groups unable to identify with the policy of the state in which they lived “must forgo any sort of activity in an international sense”.’ 13 For Schiemann and his liberal fellow travellers within the Congress, credible guarantees of minority rights were seen as one of the pillars of a durable European peace settlement that would in time give rise to a ‘United States of Europe’. Within this context of peace and stability, they saw it as entirely normal that organised national communities would develop and maintain trans-border ties with kin in neighbouring states, and that a ‘Europe of Nationalities’ would ultimately emerge alongside a Europe of states.

In 1931, the leaders of the Nationalities Congress argued that the League of Nations should proceed to a detailed examination of the Estonian experience in order to ascertain whether this model might advantageously be applied in other states. The League Minority Secretariat did respond to this appeal, producing a report on this theme in November 1931. 14 This critique of cultural autonomy makes a number of pertinent objections to the NCA concept which merit contemporary scrutiny, and I return to some of these points below. The overall negative assessment of cultural autonomy contained in this document, however, seems more a reflection of the League’s continued obsession with indivisible state sovereignty. In his concluding remarks, Ludvig Krabbe of the League Minority Secretariat asserts that: ‘the “complete” solution to the minorities problem rests on the development, in countries of mixed population, of a spirit of national tolerance and liberalism, a development which will be no less long and painful than that which took place in the sphere of religious tolerance, but which will become all the more difficult if a system of separatism in certain branches of the common life of the state becomes generalised’. 15

For all of the pertinent objections that Krabbe raises with regard to NCA, the League’s own approach could hardly be deemed successful in fostering the spirit of national tolerance and liberalism which he holds up as an ideal. The League’s minority rights regime was not working, politics was polarising around ideological extremes, and yet the League was reluctant to embrace alternatives. Its failure to adequately address the minorities question was ultimately a root cause of the disaster which befell Europe during 1933-45, when concepts such as überstaatliche Volksgemeinschaft (previously used in an altogether different sense by the Nationalities Congress leadership) were subverted to serve the expansionist goals of Nazi Germany, and Europe experienced the horrors of war, genocide and ethnic cleansing.

15 Ibid.
THE CONTEMPORARY REVIVAL OF CULTURAL AUTONOMY. CAN LESSONS BE DRAWN FROM THE INTER-WAR PERIOD?

The experience of World War Two and the subsequent superpower division of the continent contrived to remove minority rights from the European agenda for almost half a century. Indeed, in some quarters it was blithely assumed that the issue had ceased to be of any importance or relevance to the modern world. Yet, with the end of the Cold War and the demise of communism, Europe again found itself confronted with what Roshwald terms the ‘dilemma of ethno-cultural diversity’: how to give adequate recognition to complex and distinctive cultural traditions without undermining the ‘civic cohesion of multiethnic countries and [reinforcing] a parochial approach to politics among their constituent nationalities’. Such is the challenge faced by the various international organisations (OSCE, Council of Europe, European Union) that, since the start of the 1990s have been engaged in the construction of a new minority rights regime for post-Cold War Europe. This endeavour was initially supposed to be universal in scope. As was the case between the wars, however, this regime has in practice been directed primarily at the states of Eastern Europe.

Within this context, international actors have finally begun to acknowledge the potential of non-territorial autonomy as a vehicle for cultural self-determination of minorities. In the space of the past decade and a half, variants of NCA have been adopted in Estonia (a law which claims direct descent from that of 1925), Hungary, the Russian Federation, Croatia and Ukraine, and the concept also formed the basis for the 2005 draft minorities law in Romania. Non-territorial cultural autonomy has also held an obvious appeal for Roma minority rights activists, which – like many Jewish politicians in inter-war Central and Eastern Europe - consider the model to be ideally suited to the needs of their transnational and territorially dispersed group. Echoing the inter-war Nationalities Congress, Roma activists have also challenged the state-centric format of European and Euro-Atlantic international organisations, arguing that organised minority groups should be given subjectivity at the international level. A similar call was made by

16 Roshwald ‘Between Balkanization and Banalization’, loc cit.
Hungarian political circles in connection with the proposed ‘status law’, which most commentators would see as being inextricably linked to Hungary’s espousal of NCA in 1993. In seeking to reach out to Magyar kin minorities living beyond the boundaries of Hungary, PM Victor Orban expounded his vision of a future ‘Europe of national communities’, just as the likes of Paul Schiemann did back in the late 1920s.20

For some authors, these developments can be characterised as ‘Austro-Marxism’s last laugh’.21 The current context of globalisation and European integration, they argue, offers scope to move beyond current modalities of territorially-based sovereignty and realise the vision first expounded by Renner and Bauer more than a century ago.22 The reality, however, appears somewhat more complex, in that the revival of NCA in contemporary Europe has been characterised by a set of debates which are in many ways startlingly reminiscent of those that took place between the wars. As Roshwald has observed with regard to the current laws on NCA, ‘pointing to the practicalities of such an approach is one thing, and winning the support of cultural majorities and minorities alike … quite another’.23 I do not propose to examine these various laws in detail, as this is something that Christopher Decker will do in his own report for this seminar. Instead, I will try to highlight some common themes in the various national debates on NCA and make a few observations of a general character.

Firstly, as a general point, one can say that in many cases, minority rights issues are still highly ‘securitised’, especially in Central and Eastern Europe. Even if national governments and national majorities see NCA as less threatening than territorially-based autonomy, fears of creating a ‘state within a state’ remain very much alive in many contexts. Secondly, as Roshwald rightly observes, many national minority groups themselves remain to be convinced that NCA has any real practical relevance to their situation. If one looks at the practice of cultural autonomy both during the inter-war period and today, successful applications have been limited to groups that are small and territorially dispersed in character – in other words, to groups that have no possibility to realise meaningful cultural self-determination by any other

10

21 This is to borrow from the title of Bill Bowring’s excellent 2002 article on NCA in Russia: “Austro-Marxism’s Last Laugh? The Struggle for Recognition of National-Cultural Autonomy for Russians and Russians,” Europe-Asia Studies, 54, 2, 2002, pp. 229-250.
23 Roshwald ‘Between Balkanization and Banalization’, loc cit.
Those present-day international actors intent on promoting NCA appear to couch it as a potentially less destabilising alternative, rather than a complement to territorially-based minority rights. This, however, raises the question of whether larger and more compactly settled minorities will be willing to forego the kind of territorial autonomy that has been routinely granted to similar groups living in Western Europe. Certainly in cases where groups have already achieved a measure of state-funded territorial autonomy, it has been difficult to persuade them to trade these rights for a scheme that represents a step into the unknown and has major implications in terms of resources and organisation.

One issue of particular concern to many minorities has been the potential financial burdens of NCA, especially the requirement to pay additional taxes to a cultural self-government. In this regard, it is hardly coincidental that minorities implementing the scheme have been for the most part relatively well-off, and have possessed a high degree of socio-political cohesion. The prospect of additional taxation was a particular concern for Estonia’s inter-war Russian minority, which already enjoyed territorially-based minority rights and which – unlike the German and Jewish minorities – was for the most part rural and highly impoverished, as well as having high levels of illiteracy. In today’s context, similar considerations might lead one to question the immediate applicability of NCA to groups such as the Roma.

Even if NCA can be established, it stands to reason that it does not in itself represent a ‘complete solution’ to the national question. Renner and Bauer’s theory presumes that once cultural autonomy is granted, this will take culture out of politics and leave the state free to focus on issues of common concern to all citizens. However, cultural autonomy in itself offers no guarantee that the state will treat all citizens equally, grant access to political decision-making and distribute resources equitably, rather than prioritising the

24 Ludvig Krabbe makes this point in his 1931 memo for the League of Nations. If one looks at the contemporary scene, then the only the small and dispersed Swedish minority has thus far implemented the Estonian NCA law of 1993. The fact that Hungary opted for NCA also partly reflects the numerically small and scattered character of its minority population.


26 This remark is relevant to Russians in Estonia, both between the wars and today. With Russian language schooling already operating under local authority auspices in the 1920s, most local Russians saw no need to introduce NCA. Similar territorially-based rights have been extended to Russian-speakers (regardless of citizenship) in today’s Estonia, and many Russian leaders have again been suspicious of trading the current status quo for the uncertainties of NCA, especially given that the latter system is open only to those with Estonian citizenship. See in this regard Smith ‘Cultural Autonomy in Estonia’ and David J Smith, “Retracing Estonia’s Russians: Mikhail Kurchinskii and Intervar Cultural Autonomy,” Nationalities Papers, 27, 3, 1999, 455-474.

27 Here some critics assert that without meaningful participation at grass roots level, there is a danger that NCA – and minority politics more generally - might become a vehicle for the narrow interests of an unrepresentative elite group purporting to speak in the name of the minority. See the discussion in Ilona Klimeva-Alexander’s contribution to Nimni (ed), 2005.

interests of the majority nationality. Renner and Bauer for their part fully recognised that NCA in itself was not sufficient. In their original scheme, it went hand in hand with a consociational form of democracy that would see all national groups represented within a grand coalition government, thus giving access to political decision-making power. Similarly, the Nationalities Congress of the 1920s – while recognising that the key to the ‘national question’ lay in working constructively within individual states – saw NCA as a complement to a genuine and robust League system of minority protection that would prevent governments from engaging in practices of dissimilation. If the League system never came close to matching this aspiration, the situation in contemporary Europe offers greater room for optimism: here, EU conditionality criteria relating to institutional guarantees of democracy and ‘respect for an protection of minorities’ have served as an especially powerful instrument impelling states to take appropriate measures in the spheres of both equality and positive rights. In so far as the minority rights criterion has not thus far been formally incorporated into Community Law, however, it remains to be seen what kind of minority rights regime will ultimately emerge within the enlarged – and, one would hope, still enlarging – European Union.

My final observation on NCA in many ways follows on logically from the preceding ones. It relates to the requirement to enrol on a national register. Along with an institutionalised system of passport nationality, formal enrolment constitutes a sine qua non of the NCA model, and yet it has proved controversial and divisive for many minority groups, both during the inter-war period and the contemporary era. If minority rights are to be guaranteed only to those on a national register, where does this leave those who are unwilling to enrol? Opponents of NCA in inter-war Europe feared that the registration requirement would introduce a line of legal differentiation within minority groups, and that this in turn might actually serve to weaken the overall position of the minority vis à vis the state and majority nation.

29 In this regard, Krabbe argued that NCA had offered no defence against ‘nationalising’ measures in other spheres of society, such as the economy or religious life, where there were ongoing wrangles over church property during the late 1920s. Ibid.
30 This proved to be a major issue in the protracted debates on the Estonian cultural autonomy law during 1921-25, and it is referred to in Krabbe’s memo of 1931. Krabbe suggests that alternative models not based on registration might actually be more practical. By way of example he cites the much admired Latvian schooling law of 1919-34. Rather than delegating competences to a minority corporation, this law divided the state administration along national lines, creating minority sections within the Education Ministry that were appointed by minority representatives and were answerable only to the Minister of Education. The democratic Latvian Republic did not require its citizens to state an ethnic affiliation in their passports. Rather, children were allocated to schools on the basis of their declared ‘family language’ – i.e. the tongue most commonly spoken at home. Wherever a district contained 30 children speaking a particular family language, the local state authorities were obliged to offer schooling in that language. As in Estonia, however, this law did not adequately cater for the needs of territorially dispersed minority groups, and the German minority, for instance, also set up its own privately organised corporation and system of taxation. Recent research has also shown how the Latvian government secretly used a range of incentives (e.g. free lunches) in order to coax poorer minority pupils (most notably in
In other cases, minority representatives have expressed a fear that by publicly registering their nationality, they might leave themselves open to discrimination/differential treatment. Krabbe’s 1931 memo, for instance, highlights concern at being branded ‘a caste apart’ as one of the main barriers to a more generalised application of NCA in Europe. Such fears appear especially salient where a group is already socially disadvantaged and marginalised: without guarantees of equal treatment, NCA could possibly be conducive to ghettoisation. Once again, this is a concern that is frequently voiced today in relation to the Roma.

The aforementioned reservation largely explains why, under the original Hungarian law of 1993, the institutions of NCA were elected by all registered voters within a particular constituency, rather than on the basis of a national register of minority voters. In those cases where a defined proportion of minority candidates were returned to office, cultural self governments could be established alongside existing local governments. It soon became clear, however, that this approach provided particular scope for so-called ‘ethno-business’, whereby the number of people voting for minority candidates in particular areas routinely outstripped the number of those who had declaring minority nationality under census returns, and candidates were themselves in many cases not representative of the minority group in whose name they purported to act. For this reason, the law was amended in 2005, and a national register system introduced.

CONCLUSIONS

For all of the issues and debates outlined above, NCA clearly merits closer consideration as one of a range of possible approaches targeted at Europe’s numerous and highly diverse historic minority groups. In this regard, it bears repeating that NCA was never intended as a stand-alone solution, but as a complement to territorially-based approaches. Renner and Bauer’s key point was that territorial approaches were not in themselves sufficient to bring about a durable regulation of the national question within deeply polyethnic environments. This lesson is as germane to the Europe of the early 21st century as it was to that of the early-mid 1900s.

The other novel feature of Renner and Bauer’s scheme that commands our attention is the ‘personal principle’ that deems nationality to be a matter of personal choice. In keeping with the terms of today’s FCNM, this principle provides a safeguard against forcible assimilation, but does not preclude


voluntary assimilation, should an individual wish to follow this route. As many commentators have pointed out, no individual is entirely ‘free’ to choose his or her nationality: national groups are in most cases ‘communities of character’ rather than simply communities of language; also, as the preceding analysis has demonstrated, the choices of individuals within ethnically fluid environments is mediated by a range of incentives and constraints ranging from the material to the socio-psychological. As also noted above, there is the problem of how to ensure that – quoting the FCNM – ‘the individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s nationality’.32 Renner and Bauer and their followers in inter-war Europe were of course aware of these issues, but regarded personal choice as consonant with the principles of modern democracy. In their view there was no better way of defining nationality and regulating political issues of nationality.

Renner and Bauer’s greatest contribution perhaps lies in their challenge to the principle that particular ethnic groups can exercise exclusive control over particular territories. Their arguments were borne out by the experience of the inter-war period, which demonstrated the difficulty of grafting the ‘classic’ Western model of ‘one nation, one state’ onto the territories of Central and Eastern Europe. Unfortunately, the League of Nations, obsessed with the principle of unitary and indivisible state sovereignty, proved unable and unwilling to counter ‘nationalising’ state approaches – and consequent ethnic conflicts – across much of the region during this period.

Some contemporary authors maintain that the nation-state has had its day and that the state-based system is inexorably giving way to a ‘neo-medieval’ Europe characterised by a complex pattern of competing and overlapping jurisdictions at many levels. I would say that this view requires major qualification, in so far as the EU and other international organisations are still defined to a large extent by intergovernmentalism, while for most Europeans, the nation-state remains the primary locus of identification and loyalty. The continued primacy of state sovereignty within international minority rights norms became clear during the vigorous debates surrounding the Hungarian status law: here, international organisations such as the OSCE and Council of Europe could not countenance the reference, within the initial draft, to a ‘transsovereign Hungarian nation’, insisting that persons belonging to minorities have to be seen first and foremost as citizens of their state of residence, and that this state must bear the primary responsibility for their welfare. Legitimising the principle of a transsovereign nation, it must be said, raises the risk that a home state might seek to abrogate responsibilities to its minority citizens. Furthermore, it was established that the proposed status law

violated the principle of equality in that it discriminated on the basis of ethnic origin between citizens of foreign states.33

As was pointed out in these debates, however, the fact that states bear the primary responsibility for the welfare of their minorities does not mean that other state governments and external agencies cannot have a role to play.34 For instance, the terms of the FCNM stipulate that Hungary can (albeit to the extent allowed by bilateral treaties with neighbouring states) legitimately promote Hungarian language and culture abroad. Indeed, when one looks at the reasoning of international organisations and the various relevant provisions of the FCNM (notably articles 17 and 18) they do not appear to be far removed from the vision expounded by the late 1920s Nationalities Congress, which sought to adapt Renner and Bauer’s original model to the realities of the modern nation-state system. One hopes that, following its recent enlargements, the EU will continue to deliver the peace, stability and prosperity with which it has become associated over the past 50 years. If this proves to the case, then it is indeed possible to envisage an EU in which state frontiers progressively decrease in visibility and EU nationals - while defined primarily by the citizenship of their home state - are increasingly free to interact with ethnic ‘kin’ in neighbouring states, without this being construed as a security threat.

The Framework Convention on Minority Rights, however, remains very much a framework. As Will Kymlicka has observed in a recent paper, European minority norms remain in a state of flux; it is not yet clear in this context whether the EU and other organisations will go further down the road of targeted rights for Europe’s ‘historic’ national minorities (NCA has thus far at least belonged firmly to this category) or opt instead for a more limited ‘generic’ minority rights regime - as exemplified by the 1966 United Nations International Covenant on Civil and Political Rights - that caters for all ethnocultural minorities, regardless of whether they are historically rooted or more recent migrant groups.35 The experience of the inter-war period suggests that attempts to dilute minority rights provision in Central and Eastern Europe would be unwise. In this regard, there is much that can usefully be learned in the present from studying past manifestations of NCA.

---

33 Deets, ‘Pulling back from neo-medievalism’, loc cit.