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## KARL RENNER'S THEORY OF NATIONAL AUTONOMY

### ABSTRACT

Karl Renner's theory of national autonomy has not been sufficiently taken into account by scholars due to difficulties in its reception and puzzling content. Neither liberal nor communitarian, his original theory combines individual rights with collective rights, territorial autonomy with personal autonomy, classical federalism with establishment of nations as constituent parts of the state. This paper will introduce the reader to Renner's main concepts. It will start by presenting Renner's ideas on the nation, the multinational state, the role of the majority principle, and the need for nations' legal recognition by and within the state. Then, Renner's core notion of national autonomy and its organisation through the personality principle will be discussed. Further, the paper deals with Renner's concept of the representation of national interests at the federal or supranational levels. Lastly, it sums up the discussion and draws conclusions regarding Renner's theory of autonomy in general.

### KEYWORDS

national autonomy, Austria-Hungary, minority rights, federalism, multinational state, principle of personality, territorial autonomy, nation, self-determination, majority rule

## Introduction

The Austro-German social-democratic politician and theorist Karl Renner (1870-1950) published for over two decades (1897-1918) on national autonomy in articles, pamphlets, and books. Such dedication culminated in the book, *The right of nations to self-determination* (Renner 1918)<sup>1</sup> – which was actually the second, expanded edition of a book published under a pseudonym in 1902 (Renner 1902), in which he gives the most complete account of his theory on national autonomy for the multinational state, where it becomes structured as a nationality-based federative state combining both territorial and personal elements.

In the hundred years that have lapsed since its definitive formulation in 1918, Renner's theory on national autonomy has often not been duly considered. Various factors may have contributed. First, although he intended for his theory to be applied to any nationally-plural state, its technical formulation was based on the social reality of the Austrian part of the Habsburg dual monarchy, a reality which was profoundly transformed just a few months after

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1 A second part covering the institutions of national autonomy was never published.

the book was published. After the end of the World War I, the small Republic of Austria became an ethnically homogenous state, and there was no need for any multinational restructuring. Though Renner lived for another thirty-two years and abandoned neither politics nor writing, never again did he write on national autonomy or the multinational state.

Second, the reception and dissemination of his work has not been fortunate. The book containing his fully realised legal theory for the multinational state was published under wartime conditions and, therefore, did not follow a normal course. It was never reprinted, neither separately nor in a compilation, despite Renner's long and highly successful political career (see Saage 2016). There was obviously no interest, during the First and Second Republics, for Austria to revive the nationality debates of the Habsburg era.<sup>2</sup> Furthermore, until recently the book was only available in German.<sup>3</sup> Therefore, access to the original formulation of Renner's legal theory on national autonomy was not easy, both due to language and the scarcity of editions.<sup>4</sup> This may explain why many scholars, even German-speakers, do not reference the book at all or refer only to its first, non-definitive edition.

Third, Renner's theoretical concepts (the legal recognition of nations, nations as constituent parts of the federative state, collective rights, personal autonomy, objections to majority rule) go against mainstream liberal political and legal theory and risk becoming an oddity (Kimminich 1989: 436; "so verläßt die personale Autonomie auch den Boden der herkömmlichen allgemeinen Staatslehre"). In the last half century, Renner's name has been associated largely with Austro-Marxism and, especially, with Otto Bauer's theory on the nation (see Bauer 2000). In most cases, scholarly publications only make passing reference to Renner, and if discussed at all, the value and feasibility of Renner's legal model for national autonomy tends to be summarily discarded, generally with sweeping arguments.

This article aims to give a fresh look at Renner's theory on national autonomy. Only if we know exactly what he meant, may we assess its merits and potential applicability. The article focuses on the definitive and most legally

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2 Throughout this paper, the expression "Habsburg Austria" will refer to the sum of all crownlands represented in the Imperial Parliament in Vienna, which is to say, the so-called Austrian part of the Habsburg dual monarchy externally identified as Austria-Hungary.

3 Nevertheless, the first edition of the book (Renner 1902) was translated into Russian in 1909; the previous work *Staat und Nation* (Renner 1899) was also translated into Russian in 1906; see Schroth 1970: 35, 41. Recently, it has been partially translated into Spanish and Catalan: see Renner 2015 and Bauer and Renner 2016.

4 By contrast, Renner's other important theoretical work, on the social function of civil law institutions, whose first edition is from 1904 and the second and definitive edition from 1924, has had two reprints in German (1929 and 1965), three editions in English (1949, 1965 and 2010), one in Russian (1923), one in Croatian (1969) and one in Italian (1981). See Schroth 1970.

complete presentation of Renner's theory as rendered in *The right of nations to self-determination*.

Renner did not develop his notion in an ideological vacuum. Two main political influences must be mentioned. The first, the rich reformist liberal-constitutional tradition of Habsburg Austria, which paid considerable attention to nationality questions and whose greatest achievements include the stillborn Constitution of Kremsier of 1949, the December Constitution of 1867 and its hallmark, the constitutional guarantee of equal rights for all Austrian nationalities. Renner continued that reformist tradition<sup>5</sup>.

His second influence was his militancy in the Austrian Social-Democratic Labour Party. In 1896, the year before he started publishing on national issues, the Congress of the Second International in London passed a resolution supporting "full autonomy for all nationalities."<sup>6</sup> By 1899, Renner had already published under pseudonym the core of his ideas on national autonomy.<sup>7</sup> Later that same year in Brünn/Brno, the All-Austrian Federative Social-Democratic Party approved a political program for constitutional reform of the Austrian part of the monarchy. It included the following points: Austria should become a democratic, nationality-based federative state; nationally defined self-administrative bodies should replace the existing crownlands, and legislative and executive powers should correspond to national councils; all national self-administrative bodies should integrate into a national union for the management of each nation's issues.<sup>8</sup>

The nationality-based federative state, nationally defined self-administrative bodies, national councils, and national unions are all crucial notions to Renner's theory. Through his intellectual capacity, he developed the Brünn/Brno program's inspirational but vague concepts into a theory on national autonomy for Austrian social democracy that could serve for constitutional reform of Habsburg Austria.

## From Austria-Hungary to the Organisation of World Society

Renner regarded Austria-Hungary as "Europe's most peculiar state," and aimed to transform it into a "Great Switzerland," with a monarch at its head. In his view, the multinational state of Austria-Hungary, restructured following his ideas, could be a model for world democratic society of the future (Sandner 2002: 9). Nevertheless, for political reasons his proposals focused on the

5 See Kann 1950 for an introduction to the projects to reform the multinational state. The works of liberal politician and author Adolf Fischhof were influential for Renner's theory: see Lagi 2011.

6 The resolution was a compromise to avoid an explicit resolution supporting Polish independence. See Snyder 2018: 73-89.

7 Renner 1899. The text has been reprinted by Pelinka 1994: 7-58. For an English translation, see Renner 2005.

8 On the drafting of the program, see Mommsen 1963: 314-338. For an excerpt of the resolution, see Lehmann and Lehmann 1973: 73-75.

Austrian part of the dual monarchy. He expected Austrian reforms, by example, to have a moral impact on Hungary, which at that time constituted a separate national state (Kann 1950: 160).

Renner was not only convinced that the preservation of a vast economic space corresponded with workers' real interest, he also thought that the destruction of Austria was not desirable in and of itself (Panzenböck 1985: 10). Since most of the Austria-Hungarian territory was ethnically heterogeneous, he believed that the creation of national states would only reproduce the same problems already begging to be solved— a fear which indeed came to pass with time. Renner defended the integrity of the dual monarchy —his ideal framework for supranational integration – until the end of the World War I (Panzenböck 1985: 36). This was not monarchist or Habsburg fascination, but rather the taking advantage of political circumstances for both social-democrat and national autonomy objectives. When it became clear that the preservation of Austria-Hungary and its alternative – a Danubian federation – have become politically impossible, he settled, as most socialists and liberal German Austrians did, for the second best option: the incorporation of German Austria (*Deutschösterreich*) into Germany — an option that was, nevertheless, vetoed by the Treaty of Saint Germain. When, in 1945 as a part of Hitler's legacy, the incorporation of Austria into Germany had proven definitively impossible, he then opted for the creation of an Austrian state identity.

His recipe for constitutional reform in Habsburg Austria, and any other multinational state, was democracy and autonomy: democratisation of the political structures of the state, and national autonomy for the cultural communities existing within the state borders under a federal scheme. All structures had to be democratic: the territorial and national self-administrative bodies as well as the parliament and executive branch for the whole of the state. Renner was a reformist; he defended a democratic evolution strategy with a view to reducing national and class antagonism (Panzenböck 1985: 36; Lagi 2011: 124).

His commitment to democracy is beyond doubt. He wrote: "A group of people can only be governed in one of two ways, and only if each of those forms of government are implemented consistently and without hesitation: through absolute rule or democratically. Any intermediate solution must be excluded; any step away from either is harmful." (Renner 1918: 251)<sup>9</sup> He wrote intensely on electoral reform before universal male suffrage was instituted in 1907, and one of the first legal measures he personally drafted and got passed in November 1918 as the head of the chancellery was the extension of suffrage to women.

Nevertheless, some authors have criticised Renner for not having a democratic theory of his own or for not being interested in democracy as a system of government (Pelinka 1989: 56 ["demokratietheoretisch desinteressiert"]; similarly, Busekist 2019: 557–558). This criticism is unfair and, above all, inexact. His whole theory on national autonomy is a complete amendment to liberal democratic theory (correctly, Villers 2016: 927). It must be stressed that

9 All quotations in English from the German original are the author's translation.

he did not purport to replace the individual with the nation as the cornerstone of democratic society nor constrain the exercise of individual political rights within the confines of nations (otherwise, Villers 2016: 927, 937), but rather to integrate both into state architecture. Renner stressed the difficulties of majority rule in multinational societies. In fact, in the second and definitive edition of his classical work *Of essence and value of democracy* (1929), Hans Kelsen includes a paragraph on the “natural limits” of majority rule that recalls Renner’s personality principle.<sup>10</sup>

## The Nation within the Multinational State

Austro-Marxists were the first stream of thinkers to place the nation – understood as a cultural entity – at the centre of legal reflection on the state. Renner wrote that “the social democrat believes that the nation is indestructible and does not deserve to be destroyed.” (Renner 1918: 23)

Renner understood the nation as a conscious cultural community, “a community of intellectual and emotional life,” “of thought and feeling and the expression of thought and feeling; the national language and literature in which this unity is embodied.” (Renner 1918: 74, 101–102; Renner 2005: 25). For him the national idea is not supranatural, but a causal product. Unlike Otto Bauer, Renner did not elaborate an original theory on the nation, nor did he intend to, for he was concerned – as his 1918 book clearly shows – with the *legal* structuring of his multinational model, therein his real contribution.

## The Nation and the State

Renner aimed to organise nationality within the state to prevent two dangers that still concern today’s studies on federalism: that the majority wield political domination over the minority and that autonomy lead to the secession of the minority nation (Langewiesche 2008: 100).

In Renner’s view, the nation-state is not undesirable in and of itself; just the opposite, “it is the greatest resource and strongest demand for the nation [...] in the case of nations settled in a compact territory where that territory constitutes an appropriate area from both an economic and defence standpoint.” (Renner 1918: 134) Nevertheless, he argued that, in most cases, this was merely a fiction. Very few are real nation-states; most are merely “nationality states” that deny national diversity within their borders.

The nation-state is “one of the possible solutions to the national question, a solution of blood and steel, through the demarcation of states by international law.” However, it was not an adequate instrument to solve the question

<sup>10</sup> According to Groß 2007: 309, this is an important aspect of Kelsen’s work. On the relationship between Karl Renner and Hans Kelsen see Lagi 2007: this author argues the influence of Georg Jellinek and Karl Renner on the formation of Kelsen’s democratic and liberal sensitivity.

of nationalities in Habsburg Austria, since the nation-state “does not suppress national conflicts when they include foreign minorities, but rather produces them and deepens them.” (Renner 1918: 109) The nationalities state is the only one that actually safeguards political freedom and the equality of nations. For Renner, the future belonged to the nationalities state, not to the homogenous nation-state, which he considered too small to carry out its functions in the coming world economy.

Renner believed the national question could be neutralised through the disentanglement of national interests from those of a social or economic nature. Issues of national interest cannot be solved through majority rule. Consequentially, the state must confer competence on those issues – and only those – to the nations, who should be empowered to decide autonomously by means of public law corporations. Once social and economic interests have been separated from those concerning the nation, the central institutions of the state can manage the former.

The nation and the state have different areas of focus. The state is more of an economic community than a national one; it must comply with its economic, social, and humanitarian tasks regardless of national culture. Therefore, it has priority over the nation. “Nations achieve their objectives over centuries; they can always wait. The worker, however, has to go out and find work and bread on a daily basis. Orphans and the elderly need to eat everyday; they can never wait.” (Renner 1918: 104)

The state fosters material culture and the nation, spiritual. Nations are responsible for public instruction, art, and literature. This means that, at the very least, they run national schools, universities, museums, theatres, etc.

Renner conceded that since public instruction also has to do with the essential conditions for material culture, the state should establish an educational minimum that all nations must provide, and safeguard said standard at each educational level in addition to guaranteeing the necessary educational resources for poor, less-developed nations.

### **The Nationalities State and Majority Rule**

Renner's defence of the nationalities state included criticism of a sacred liberal principle: majority rule. In democratic systems, the law is the expression of the majority. Therein lies no problem whatsoever if the people, though a plural unit, only have one singular group identity. However, when the people have more than one group identity, the majority may represent a transversal political majority within the state, but may also represent the majority of the majority nation within the state, in other words, the decisions of the majority nation. Therefore, for Renner, when the state brings together various nations, the principles of political freedom and equality cannot truly be achieved but through the nationalities state; “when political parties represent nations, that weapon of combat [the election] becomes useless because the number of followers of a national political party cannot increase over the demography of the

nation it represents, even if election propaganda is passionate. For this reason, the struggle of minority nations will not lead to victory. Even still, struggle does not disappear, just the opposite, it intensifies.” (Renner 1918: 137)

Criticism of majority rule in multinational contexts for reasons other than anti-parliamentarism was not exclusive to Renner or to Austro-Marxism; it belonged to the *acquis* of ideas also common to many Austrian liberal thinkers, who understood that the political recipes of classical liberalism would not work satisfactorily in a multinational political entity such as Austria.

### Legal recognition of the nation

The constitutional law of late imperial Habsburg Austria recognised equal rights to nationalities.<sup>11</sup> Renner criticised this constitutional entrenchment since nationalities lacked legal personality. For him, the main task of the political reorganisation of the monarchy was the legal establishment of the nation as a legal person.

Each nation should occupy its place within the nationalities state as a personal public-law corporation. Renner makes an analogy to the individual’s legal position. The individual has freedoms as a human being and political rights as a citizen. Similarly, the nation would also have a double condition as both subject and body of the state. As a subject, the nation enjoys freedom before the state and exercises its right to self-determination, but this status imposes on it certain limits, for instance, the waiving of *ius nullificandi* and *ius secedendi*. In its condition as a body of the state, the nation takes part in both the local and the central authority and rules jointly with other nations of the state, all while exercising its right to shared rule. National autonomy is only half of a nation’s right in the nationalities state since it also includes proportional shared rule (Renner 1918: 128). Both autonomously and as a body of the state, the nation enjoys equal rights.

Legal recognition of the nation, through the conferral of a public-law legal personality, solves two relevant legal problems for which classic legal theory has no solution; the nation as a legal person can be both the holder of collective rights and accountable for infringements and wrongs. Attributed a public-law legal personality, the nation, through its self-administrative bodies, is able to directly assert itself against members of its community – if, for instance, they infringe upon the duty to contribute to sustaining the expenses of the national corporation –, against members of other national communities – if, for instance, they violate the nation’s right to a collective reputation –, and against territorial bodies, other national corporations, and the state itself – if they impinge upon national competences.

<sup>11</sup> According to Article 19 of the State Fundamental Law on the general rights of citizens, “all nationalities in the state enjoy equal rights, and each has an inalienable right to the preservation and cultivation of its nationality and language. The equal rights of all languages in local use are guaranteed by the state in schools, administration, and public life.” On this key constitutional provision, see Stourzh 1985; in English, Mazohl 2014.

For its members, belonging to a nation implies a range of rights and duties via the national body, but it never becomes a political community; the source of political rights remains the state. Therefore, one might add, the risk for political domination and oppression within the minority group appears relatively minor.

### The Right to Self-determination

Before World War I, Renner and Bauer had never demanded more than national autonomy for Austrian nationalities, but while Bauer changed his mind in the last year of the war in response to changing circumstances, Renner maintained his views on this and other points. His nationality policy included the preservation of the monarchy as an economic and political space (Panzenböck 1985: 9), and his notion of the right to self-determination was the antithesis of the “principle of nationalities,” at least in its absolute understanding as a principle leading to the creation of new states – to each nation, a state. For this idea, Renner opposed the principle of personality as a basis for the internal organisation of the state.

Renner considered that both the state and the nation have rights and that the key is to draw the demarcating line between the rights of the whole state and the nation’s right to self-determination. The nation’s right to self-determination does not undermine state sovereignty since Renner understands the former as autonomy, not sovereignty. The nation and the state do not stand legally at the same level: the state is a sovereign power, the nation, a subordinate one (Pierre-Caps 1994a: 417; Pierré-Caps 1994b: 435).

The nation’s right to self-determination does not include secession, since nations do not possess *ius secedendi*—at least, he adds ambiguously, “as long as the legal community continues.” (Renner 1918: 150) As a scholar and reformer in Habsburg Austria, Renner defended that the right to self-determination only dealt with the internal organisation of the (multinational) state. Thus, he anticipated an important distinction that, after World War II, international law scholarship would establish between internal and external self-determination: the former refers to autonomy, the later to secession.

Certainly, after the collapse of Austria-Hungary and as a politician of the Republic of Austria, he envisioned, on some occasions (1918, 1938), what could be considered the external exercise of the right to self-determination—for the reunification of the German population into one state, but he only dared to do so when there was a propitious context, never when it would have run against international law or politics (1919-1920, 1937, 1945). For Renner, the external dimension of the right to self-determination was more of a political expedient than a legal instrument; it depended on moments of opportunity. There was no contradiction between the scholar and the politician (see also Busekist 2019: 10–15; otherwise, Guber 1986).



## The Content of National Autonomy

For Renner, national autonomy based on the personality principle holds the key to a new political society: the nationalities state. National autonomy is conceived as a kind of social contract between the nations and the state; the duty of nations to comply with their tasks as state subjects, on the one hand, and the duty of the state authorities to accommodate nations' rights to self-determination and shared rule, on the other, constitute reciprocal checks and balances to the extent that one without the other loses its value and force. If nations refuse to assume their duty, the legal link between them and the state breaks, to be replaced by a simple power struggle (Renner 1918: 128).

Renner proposed building the state *with* the nations. In his view, the Austrian constitution could not be blind to the state's most relevant political fact: the existence of several national realities. He wished to organise nationalities as constituent parts of the state.

Renner's national autonomy model operates in nationally heterogeneous territories, in which territorial autonomy is not possible or not enough. He does not exclude territorial autonomy as such; what he rejects is territory as the sole basis for the right to autonomy (Pierré-Caps 1994a: 404). His proposal for constitutional reform combines territorial and personal autonomy (Panzenböck 1985: 3; Mommsen 1963: 54). Many of Renner's critics and detractors, both contemporary and succeeding, including most of the leading figures of the social-democratic party, have failed to see that his proposal did not limit itself to the application of the personality principle, nor to the entrenchment of a handful of cultural rights; national identity was attended to through the formation of institutions of power (for contemporary objections, see Snyder 2018: 148).

In Renner's work, the territorial plan for the federation is not as well defined as that of the individual. It can be argued that reform of territorial organisation of Habsburg Austria allowed for several possibilities, as the many projects published before the end of the monarchy illustrate. What seems beyond question is that Renner was exceedingly critical of the existing territorial division, the division into seventeen crownlands. He defended the territorial integrity of the Habsburg monarchy, not of the crownlands. The crownlands were the internal enemy of the monarchy, the most serious obstacle to a solution to the national problem and, therefore, inadequate and dangerous for extended territorial autonomy; nothing was more wrong than the idea of recognising autonomy to the "historical-political individualities" just because they had had it before (Renner 1918: 80–81, 246).

Instead of the crownlands, he proposed the creation of eight new units (*Gubernien*), each with its own parliament and government, and above them, four new "special statute territories" (*Sonderstellungsgebiete*) for the Alpine lands, the Sudetes lands, the pre-Carpathian territory, and the coast, each with their parliament, government, and capitals in Vienna, Prague, Lemberg, and Trieste. These special statute territories would enjoy the status of member states of the

federation and would assume the core tasks of their own internal administration (see Renner 1918: 257–260).

Renner wanted to strengthen the districts, administrative divisions inferior to the existing crownlands or the units that should replace them but bigger than municipalities. He believed that they should constitute the essential link between the state and the municipalities (Schlesinger 1945: 214), awarding more practical relevance to redefining and reinforcing the districts than to the replacement of the crownlands by new units of government and special statute territories. The territory of the state should be divided into administrative divisions that respected homogeneity as much as possible. He believed that a reform of the layout of local administration (municipalities, districts, and shires) according to the settlement areas of Austrian nations, even without destroying natural units, could solve the national problem in local administration for four-fifths of the territory (Renner 1906: 240–242). Only the remaining space would contain areas of mixed settlement. All in all, Renner's main practical concern regarding territory was the reform of local administration from a democratic perspective.<sup>12</sup>

In monolingual areas, competence on culture would simply be added to the sphere of competences of the territorial administration. In multilingual areas, which according to Renner could be reduced to a fifth of state territory, national and territorial corporations would coexist. Part of the competences would correspond to the board of the national district or municipality, and the other part would be jointly assumed by the committees of both (or more) national communities under the presidency of a state civil servant. In addition, national self-administrative bodies would be responsible, through state delegation, for the execution of other territorial competences, such as the levying of direct taxes, recruiting, publishing laws, and communicating directives issued by state authorities (Renner 2005: 39).

Renner believed that, in this way, the state, in most of its functions, would interact with the citizen only in his or her language, and that the administration of multilingual regions would include a national administration for each citizen. In this way, citizens' rights to receive laws and have them executed in their own language would be safeguarded.

Though his initial focus is on national autonomy as *limited* to culture and national issues, Renner's model develops, in practice, into a *comprehensive* model for national administration. Critics usually overlook this aspect.

The outcome is a multinational state in which political unity is dissociated from national unity, but not in the usual way. The nation does not remain separate from the state apparatus, reduced to its cultural dimension, as a means of reconciling state unity with cultural and national diversity (but see Pierré-Caps 1994a: 421–422; Pierré-Caps 1994b: 435).

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<sup>12</sup> Most of chapter 4 of Renner 1918 is devoted to these questions, which implies almost a fifth part of the 294 pages of the work.

Renner distinguished national autonomy from other arrangements, such as national cultural autonomy, which he explicitly identified with the Jewish national movement in Eastern Europe and which was later implemented in some communist and post-communist states. In national autonomy, he argued, the national corporation is part of the state. It holds state powers. It is a constituent part in the federative government. In national cultural autonomy, by contrast, the nation is purely a cooperative society with its own administration but no state power; this model presupposes a centralized state in which nations are not only given a separate existence; they lie outside the state (Renner 1918: 46).

In Renner's view, national cultural autonomy neglects three key aspects: the organisation of the state and the nations, the level of competences conferred upon their self-administrative bodies, and the structure of the state. He understood national autonomy should include "the founding of the nation at the same level as the state, its establishment as a member state, and the structuring of the whole state as a nationality-based federation." (Renner 1918: 84) In sum, Renner defended something very different from national cultural autonomy: the transformation of nations into a state, the transformation of the state into nations, and their reasonable structuring (Renner 1918: 82).<sup>13</sup>

Renner's national autonomy should also be distinguished from institutional arrangements implemented at the provincial level in Moravia (1905), Bukovina (1910), and Bosnia and Herzegovina (1910). He criticised their limited scope and harmful effects; the arrangements did not aim to protect the minority, but instead to protect the possessions of each nation.<sup>14</sup> He did, however, consider the separate Czech and German sections of the Bohemian school board to be authentic institutions of national autonomy; they began operation in 1890 and continued in independent Czechoslovakia (Renner 1918: 77).

## Structuring National Autonomy: The Principle of Personality and Free Adhesion

Renner disregarded the controversial historical principle on territory: "In its pure form, the territorial principle [...] is the cruellest and most inappropriate solution. The position of the foreign nationalities included in a territory is contingent upon whether they are favoured or not, and they are forced to adopt a belligerent stance. It is the system of incessant squabbling, of never-ending disputes over assets" (Renner 2005: 32). It implies: "if you live in my territory, you are subject to my domination, my law and my language!" (Renner 2005: 27–28; similarly, Renner 1918: 75, 107)

<sup>13</sup> In the original: "die Verstaatlichung der Nation und die Nationalisierung des Staates". He also opposed the content of the Brünn program for the concept of national cultural autonomy (Renner 1918: 46).

<sup>14</sup> Renner 1918: prologue, footnote in 51, and 115; see also 74–79 for a contrast between the existing curial system and the proposed national autonomy.

The basis of Renner's notion of national autonomy is, by contrast, the principle of personality, which frees the nation from a territory in the same way that serfs were freed from land linkage.

Renner's principle of personality is based on free choice. His notion of national autonomy does not lie in the mandatory assignment of nationality to a certain territory nor in mandatory national attribution for individuals that speak certain language or possess certain objective features, but instead in individual free choice. He argued that, for national adhesion to be a source of rights and duties, it must be based on free consent.

Free choice with regard to adhesion to one nation or another should be exercised through inscription in a national registry or census available to all the nationalities of the state, regardless of their place of residence. Renner stated that individual choice of one's national identity allows for the real exercise of the individual right to self-determination, in correlation with that same right on a national scale (Renner 1918: 111).

Some scholars have criticized Renner's conception of identity for being inflexible, simple, and deterministic (Schwarzmantel 2005: 65; Garry and Moore 2005: 77; Villiers 2016: 934). Certainly, he did not enumerate all the circumstances or dynamics for the change of identity that inform today's academic debates; he implicitly presupposed that in most cases individuals would choose to affiliate themselves with the national community to which they were closest and that that nationality could only be chosen from a pre-determined list. This does not mean that his identity conception was rigid, simple, or deterministic. With a rural German background in ethnically mixed Moravia, he was well aware of the workings of bi- and multilingualism, foreign domination, acculturation, and assimilation: the bedrock of his theory on national autonomy.<sup>15</sup>

Renner did not purport to encapsulate individuals in communities of belonging or choice.<sup>16</sup> He expressly stated that "someone could not know to which nationality he or she belongs," and he accepted that "an individual can have a solid command of two cultural domains and have them coexist deep within," anticipating modern conceptions of plural and dynamic identities. Ultimately, he envisioned that anyone could withdraw or change his or her declaration of nationality for whatever reason – however opportunistic – for such reasons as the return to one's place of birth to receive mother-tongue instruction for his or her children (Renner 1918: 114) or to obtain a post in the administration (Renner 1918: 144). In an age of "guardians of the nation" (see Judson 2006), choice as a criterion for national identity, if not unusual, had begun to be contested,

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<sup>15</sup> Examples are numerous: "To be sure, national life is manifested mainly through the linguistic community. But this is not a fundamental manifestation of the common consciousness of nationality and race" (Renner 2005: 21); "Bilingualism can—in both cases [Germans and Czechs]—become the most effective tool for foreign domination" (Renner 2005: 42, and Renner 1918: 144).

<sup>16</sup> By contrast, Villiers 2016: 930, 934, claims that in Renner's model decision on national belonging could not later be changed.

both politically and legally.<sup>17</sup> Furthermore, for Renner one's personal declaration of nationality was not a mandatory declaration of national allegiance (but see Bauböck 2005: 101), but an instrument for organising public services; "the truly relevant aspect is that the individual expresses in which language he or she wants to receive the law from the state." (Renner 1918: 112)

## National Interests at the Supranational Level

### The Participation of Nations at the Federal Level of Government

Renner planned for a nationality-based federative state, in which, by virtue of broad territorial and national autonomy, a strong power at the centre would carry out relations with nationally homogenous administrative districts. Supranational issues would be devolved to a central parliament and a central government acting as institutions of the supranational state. The federal legislative branch would be the authentic unifying body of the state (Renner 1918: 271), an entity to which Renner even recognised the "competence over competence" although under certain procedural guarantees and the supervision of a constitutional court (Renner 1918: 292).

Renner considered that his model implied few innovations regarding state government, since the centre of gravity of his reforms lied "in the configuration of an adequate local administration and in the foundation of national and territorial autonomy."<sup>18</sup> Therefore, unlike modern studies on state accommodation of national diversity, he did not focus on the consequences of nationalities' equal rights at the federal level of government. His reflections on this are scarce.

He limited himself to affirming that the three powers of the federation—the legislative and executive branches and the Constitutional Court—should be established free from national and territorial influences, though their composition and function should always represent all nations and territories (Renner 1918: 273).

The federal parliament would be composed of two chambers: a popular chamber elected according to the democratic principle of proportionality and a chamber of nationalities and autonomous territories. The election and composition of this second chamber would be the following: a third of its members would be elected by the representatives of national councils, another third by the territorial units and the final third by the head of state (Renner 1918: 279–280).

By contrast, Renner did not see a need for proportional representation of the nations in the federal government and administration, as it is the case today, for instance, in Switzerland or in Belgium for their various linguistic groups. In particular, he considered that appointments to the federal administration

<sup>17</sup> It has been the legal practice in Habsburg Austria that, in cases of doubt, a person's individual national declaration would be accepted, but from 1910 on the case law began to change. See Kuzmany 2016: 46, 51.

<sup>18</sup> Renner 1918: 294.

must be based on merit and capacity, and that ministerial organisation must be grounded on technical criteria, free from the reach of national governments and autonomous territories: he opposed, for instance, the idea that each nation and autonomous territory should have one minister (Renner 1918: 280). The prime minister or chancellor would be politically accountable only before the first chamber, the popular chamber, not before the chamber of nationalities and the autonomous territories (Renner 1918: 283).

While the exclusion of the nations from the formation and composition of the federal administration was absolute in *State and Nation*, Renner modified his position in *The right of nations to self-determination*.<sup>19</sup> First, the governments of nations and autonomous territories needed some representation at the centre. Renner proposed the creation of a specific body, a federal council, comprised of a representative from each national and territorial government, under the presidency of the Chancellor. Its function would be advisory, expressing the interests of national and territorial governments (Renner 1918: 285). Second, nations needed to have a proper influence over the appointment to administrative positions, in correspondence with both multinational and federal ideas. After considering several arrangements of direct and representative democracy, Renner opted for a joint appointment scheme for district governors who would be appointed by mutual agreement between the federal minister and the representative of the relevant nation or nations on the Federal Council (Renner 1918: 288).

### Adjudication of Conflicts between the State and the Nations: A Constitutional Jurisdiction

Renner considered that the allocation of powers between the federal parliament, national representative bodies, and representative bodies of the autonomous territories – which should be based on law – required a judicial safeguard; it could not depend, he argued, on the conjunctural whims of the federal government and the parliament. Conflicts between the state and its nations should be adjudicated through the creation of a Constitutional Court of the Federation. This proposal, in the last section of his book, constitutes the legal closure of a federative model that combines territorial and national elements (Renner 1918: 291–294).

Renner argued that, in the existing system, the only way to react to an autonomous body impinging on federal powers was through federal coercion: the dissolution of the autonomous body, forced dismissal of its government, and suspension of its autonomy. Instead, he proposed judicial review; federal branches of government should submit a request to this new body, the Constitutional Court of the Federation, for the declaration of the unconstitutionality

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<sup>19</sup> However, some commentators only consider Renner's initial position as reflected in Renner 1899 and ignore significant nuances included in Renner 1918: see Wierer 1960: 109; Eide 1998: 267.

and nullity of legislative or executive acts that encroached upon federal powers, with a binding effect for all citizens. The Constitutional Court would adjudicate in conflicts between the state and its nations, between autonomous territories and nations, and between nations.

In addition, the Constitutional Court would look after the protection of the fundamental rights of citizens, continuing on with the function the existing Imperial Court (*Reichsgericht*) had carried out since 1869 in fulfilment of the state fundamental law of 1867.

Renner anticipated the essence of the first specialized constitutional court in history, a court the Republic of Austria would inaugurate only two years later. It must be noted that the Austrian Federal Constitution of 1920 was based on Hans Kelsen's drafts, following Chancellor Renner's instructions (Schmitz 1981 and 1991; Cruz Villalón 1987: 246–262). That Constitution adopted a federal model very close to the one envisioned by Renner, freed from the need to legally recognise nations other than that of Austro-Germans or to award them national autonomy. It became a purely territorial federal model, structured around a strong centre and weak territorial autonomous bodies, in which the allocation of powers was ensured by the Constitutional Court. The creation of this new institution, exactly one hundred years to the date, is Renner's most enduring and significant legacy.

## Conclusion

Renner aimed to reconcile elements that were, apparently, mutually irreconcilable: the German concept of nation as a cultural community with free choice of identity; the revolutionary principle of nationalities—one nation, one state—with the conservative principle of state integrity; national autonomy based on legal recognition and equal rights for nations with democratic values such as equality of rights among individuals and the rule of 'one-citizen, one-vote;' and personal autonomy with its territorial counterpart.

Reconciliation involves adjustments, not mutual exclusion or derogation. Renner's principal adjustments concerned the main sources of national conflict in multi-ethnic societies: majority rule and disputed territories. In few words, his recipes were: majority rule should be excluded in areas of national interest, which he associated with language and culture, and territory should be de-nationalized and national rights de-territorialized, through the recognition of national rights on a personal basis regardless of place of residence.

Renner's treatise on national autonomy constitutes a fully realised legal theory for the multinational state, structuring the state as a nationality-based federation combining territorial and personal elements. Here we must highlight two final points regarding the role of nations and the principle of personality.

Nations are integrated into the architecture of the state, along with the individual; both are necessary. This implies several consequences: the transformation of the nations into a state, each acquiring the condition of constituent parts of the federative state, at the same level as its territorial units; the

establishment of national self-administrative bodies; the conferral of powers with regard to national issues (education, art, and literature), and the possibility of delegating other state competences. Instead of territory, Renner offers power to all nations, a share in state sovereignty.

Although Renner's national autonomy is often presented in opposition to territorial autonomy, this is not an accurate reflection of his theory. He was not against territorial autonomy, which he considered the best solution, the only obstacle being that it was technically impossible in most cases, as long as nationalities lived in mixed communities. In Renner's view, the personality principle complements territorial autonomy rather than undermining it. For the Austrian part of the monarchy, he proposed reforming the layout of local administration with a view to creating as many homogenous national districts as possible. He believed that, in this way, territorial autonomy could be implemented in four fifths of the territory, while national autonomy, distinguishable from territorial autonomy, would be applied only in the remaining mixed nationality districts. Hence, his model involves a combination of both personal and territorial autonomy.

Renner left many theoretical and practical questions unelaborated or unsolved, but he provided the inspiration and the tools needed to accommodate the varying circumstances, which arise in multi-ethnic states.

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## Ksabijer Arcoc

### Teorija nacionalne autonomije Karla Renera

#### Apstrakt

Teorija autonomije Karla Renera nije bila dovoljno razmatrana u naučnim krugovima usled složenosti kod njene recepcije i zbunjujućeg sadržaja. Njegova originalna teorija, ni liberalna ni komunitarna, spaja individualna prava s kolektivnim pravima, teritorijalnu autonomiju s ličnom autonomijom, klasični federalizam sa uspostavljanjem nacija kao konstitutivnih delova države. Ovaj rad će uvesti čitaoca u Renerove osnovne koncepte. Najpre, on će predstaviti Renerove poglede na naciju, multinacionalnu državu, ulogu principa većine, in a potrebu za pravnim priznanjem nacija od strane i u okviru države. Zatim ćemo razmotriti Renerov ključni pojam nacionalne autonomije i njegovu organizaciju kroz princip personalnosti. Dalje, u radu će biti reči o Renerovom konceptu predstavljanja nacionalnih interesa na federalnom ili nadnacionalnom nivou vlasti. Na kraju, članak iznosi zaključke o Renerovoj teoriji autonomije u celini.

**Ključne reči:** nacionalna autonomija, Austrougarska, manjinska prava, federalizam, multinacionalna država, princip personalnosti, teritorijalna autonomija, nacija, samoopredeljenje, vladavina većine