

## Federalism and Non-Territorial Representation

**Jan Erk**  
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*Jan Erk is a post-doctoral student and instructor in political science at the University of Toronto.*

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### **I. CONTEMPORARY EXAMPLES:**

#### **1. Belgium:**

The Belgian federalisation process started in 1962. The first state reform in 1962-63 demarcated three Dutch, French and German (for a few German speaking districts along the German border) unilingual linguistic regions and a bilingual Brussels region. In 1970 two non-territorial cultural communities were set up. The reform creating the Flemish and French cultural communities was incorporated into the constitution by a Royal Commission in 1970 as special clause that could only be amended by special majority, i.e. the simultaneous majority of Dutch and French-speaking deputies at the Parliament. Mostly because of the complexity of Brussels, these cultural communities were designed to function in what Belgians call 'personalisable' policy areas where individuals would choose their cultural community.

The second state reform of 1970 also introduced the 'alarm bell' procedure with the new Article 38 of the constitution. According to this procedure, if three fourths of the members of a linguistic group in the Parliament deem a decision or a proposal to be in conflict with the interests of their community they can invoke the so-called alarm bell. The decision or proposal in question is then referred to the Council of Ministers who,

meeting in the principle of parity, tries to amend the legislation or reach a compromise. This procedure was installed in order prevent the polarisation of the relations between the two communities

With the third state reform in 1980, the Flemish and French cultural communities were renamed as ‘Communities’ and their competences were expanded into other personalisable policy areas like health and social welfare in addition to the already existing cultural ones. The ‘regionalised’ issues, on the other hand, were left to the newly created ‘Regions’. Or to be more precise, Wallonia and Flanders acquired new non-cultural competences which they would carry out through the institutional framework of constitutional Regions. These new regional competences were about the economy and the environment, ranging from housing to forestry. The parliaments of the Regions and Communities were composed of members of the National Parliament sitting on these substate parliaments according to their linguistic or regional registries. With the subsequent state reform, members of the Community and the Regional Parliaments came to be directly elected. This ended the double mandate practice where members of the national House of Representatives would hold seats at the substate level as well. The state reform also introduced residual powers for the Communities and Regions. That is to say, in a policy area where the Constitution does not explicitly grant competence to an order of government, the substate authorities are assumed to have jurisdiction.

In time, the Flemish side effectively merged into one as the Flemish Community took on the responsibilities of the Flemish Region with one legislative council, *Vlaamse Raad*. The divisions between the Walloon Region and Brussels prevented a similar solution. The Constitution tried to keep things relatively simple by establishing three

Regions (Flanders, Wallonia, and Brussels-Capital) and three Communities (Flemish, French, German). But the way the system functioned in practice was not that symmetrical; Flemish Community and Region were one entity, the Francophone side was composed of Brussels and Wallonia. The 1993 reform extended direct elections to the Parliaments of the remaining substate entities, i.e. the Brussels-Capital Region and the German-speaking Community. The agreement allowed the Walloon Region and the Brussels-Capital Region Commission of the French Community (*Commission communautaire francophone de Bruxelles, cocof*) to exercise the competences of the French Community. To be legally precise, using its newly acquired powers to delegate its competences under Article 138 of the Constitution, the Council of the French Community passed two decrees which allowed the Walloon Region and Cocof to exercise an important bulk of its constitutional competences.

The Belgian federation that has emerged from the fifth state reform in 1993 is not a neat symmetrical federation with clearly defined responsibilities for its orders of government. Its institutional complexity reflects the societal complexity that underlies it. As a result of the successive state reforms Belgian Constitution recognises three language groups: the French-speaking, the Dutch-speaking, and the German-speaking Communities. In territorial terms the federal arrangement is based on three Regions: Dutch-speaking Flanders, Francophone Wallonia -with a small community of German speakers, and cosmopolitan but mainly Francophone Brussels-Capital Region. The Regions have exclusive competence over regional economic development, employment, industrial restructuring, environment, land use, urban planning, road building, traffic, agriculture; while the Communities have exclusive competence over culture, language

policies, education, health care, welfare and family. According to the latest state reform of 1993, the structure of the Belgian state is as follows:

At the federal level the lower House of Parliament, the Chamber of Representatives, is composed of 150 directly elected deputies. Of this 150, 91 are Flemings and 59 Francophones. The upper House of Parliament, the Senate, is composed of 71 members. 40 are directly elected, 25 of this 40 are Flemings, 15 are Francophones. There are four coopted Francophone senators, and six Flemings. 10 senators are appointed by the Council of the French Community, 10 are appointed by the Flemish executive, and one senator is appointed by the Council of the German-speaking community. The Federal Cabinet is made up of 15 Ministers including the Prime Minister. The Prime Minister could be from either linguistic community, but since he is expected to be bilingual, and since Flemings have higher rates of bilingualism and numerical majority, chances of a Fleming assuming the position is much higher. The rest of the Cabinet should be composed of an equal number of Ministers from the two linguistic communities.

The Government of the Flemish Community-Region has 11 Ministers, including the Minister-President. The Flemish Parliament has a total of 124 deputies, of which 118 are from the Flemish Region. In matters pertaining to community issues, 6 deputies from the Brussels-Capital Region join in, bringing the number up to 124. The Government of the French Community, on the other hand, is composed of 4 Ministers. Its Parliament has 94 deputies. 75 of this 94 are representatives of the Walloon Region who are at the same time members of the Walloon Regional Parliament. The remaining 19 are designated from the Brussels-Capital Regional Parliament.

The Parliament of the Brussels-Capital Region has 75 seats, 17 of which are reserved for Flemings. The Government of the Brussels-Capital Region has 5 Ministers, including the Minister-President who has to be a Francophone. The remaining Cabinet is divided into an equal number of representatives from the two linguistic communities. The Parliament of the Walloon Region, on the other hand, has 75 deputies, who also sit on the Parliament of the French Community. The Government of the Walloon Region is composed of 7 Ministers.

### 1.1. Flemish and French Communities of Brussels:

The case of Brussels was the most important barrier which prevented the emergence of a symmetrical bi-national federation. Geographically situated in Flanders, Brussels had gradually become a francophone city in the 19<sup>th</sup> century. In fact, as their family names seem to suggest, most Brussels Francophones of today are of Flemish ancestry. Flemings call this the *verfransing* (frenchification) of Brussels. As a French speaking enclave within Flanders, residents of Brussels have a somewhat separate Bruxellois identity, albeit less consolidated as a ‘national’ identity than that of Walloons and Flemings.

In particular, the question of linguistic education in Brussels was an important barrier to a smooth settlement between the two constituent communities of Belgium. The issue of contention was the criterion to determine the choice of language. Flemings feared the assimilationist pull of the French-language in Brussels. The 1962-1963 state reform established the criterion for educational facilities as the ‘language spoken at home’. What this actually meant was that the parents no longer had the right to decide what school they wanted to send their children to. The ‘language spoken at home’ was subject to

verification by authorities. At the insistence of Flemish leaders, the law was installed in order to prevent the Flemings of Brussels to send their children to more prestigious Francophone schools. But still, the policy was based on the individual linguistic registry and not the region.

The successive state reforms increased the powers of the Brussels-Capital Region. The law of 12 January 1989 established the new institutions of the Brussels-Capital Region. The Capital Region was divided into three Community Commissions, one Francophone (*Commission communautaire francophone, cocof*), one Flemish (*Vlaamse Gemeenschapscommissie, VGC*) and one for common affairs (*Commission communautaire commune/ Gemeenschappelijke Gemeenschapscommissie*).

Residents of Brussels are affiliated with either the Flemish or the French-speaking Communities of Belgium. The day-to-day affairs of these Communities are administered by the institutions listed above. The high number of foreigner residents of Brussels (around 30% of the city population) is an additional factor, which probably helps dilute polarisation of relations between the inhabitants. Yet the question of Brussels remains one of the most difficult issues facing the two constituent communities of Belgium. According to the sixth state reform of 2001, Flemish representation in police and municipal boards has been increased in the Brussels-Capital Region, and new funds have been allocated for education in the French Community.

### 1.2. Francophone suburbs of Brussels in Flemish Brabant:

In the decades following the end of the Second World War, many francophone families settled in the suburbs surrounding Brussels. These suburbs in the Flemish Brabant were

historically Flemish-speaking districts. While French-speakers expected French education and linguistic rights in these six districts surrounding Brussels, Flemings were adamantly opposed to providing such facilities.

The status of French-language in the suburbs of Brussels has proven to be a very difficult issue to settle to the satisfaction of both sides. While settling many other thorny issues, the 2001 Lambermont Accord has failed to bring a solution to the status of French language in these six districts in Flemish Brabant. But as a provisional measure, the francophone side accepted the limitation of the Brussels-Capital Region to the 19 boroughs, effectively bringing a halt to the spread of Francophone suburbs into Flemish Brabant. In return, the Flemings accepted to provide some minority linguistic services in French when numbers warranted in the surrounding six boroughs left outside of the Brussels-Capital Region.

### 1.3. Fourons/Voeren:

The question of language is a personalisable issue only in Brussels. Elsewhere in Flanders and Wallonia, the language regime and community affairs are based unilingually on the language of the region in question. The only exception to this rule was the minority language education available in a few districts along the linguistic border. 14 miles from the Walloon border, the university town of Louvain/Leuven, was such a district where French language education was available. But the demonstrations and riots during the late 1960s led to the expulsion of the francophone university population from Louvain/Leuven putting an end to the minority francophone education here. Mouscron-Comines/Komen-Moeskroen in West Flanders had a sizable francophone population who

were entitled to French-language education as well. In 1962 this commune was transferred to the Walloon province of Hainaut. But the case of Fourons/Voeren is the most problematic of these.

Originally the language of this area had been a dialect of low German, but French had since become the spoken language here. The inhabitants of Fourons/Voeren in the Flemish province of Limburg had historically been closely associated with the Walloon province of Liège. The 1962-63 state reform demarcating the linguistic border placed Fourons/Voeren in Limburg instead of Liège. Since then residents of Fourons/Voeren have continuously demanded to be placed within the francophone Region but Flemish politicians have been firmly opposed such a plea. Within the increasingly tense climate during the 1980s, the mayor of Fourons/Voeren elected through the *Retour à Liège* list in 1979 brought the issue to the forefront of Belgian politics. The unilingually francophone mayor exacerbated the lingering conflict by refusing to speak Dutch in office as he was required by law. He was removed from office by the Conseil d'Etat in 1986. The Fourons/Voeren conflict has lost the intensity of the 1980s but disagreements between Flemings and francophones continue. Recently, the Flemish government has agreed to provide some minority linguistic services in Fourons/Voeren.

#### 1.4. The German-speaking Community

The four Walloon districts of Eupen, Malmedy, Sinkt Vikth and Sinkt Niklaas bordering Germany have 60,000 German-speaking inhabitants. The 1980 State reform established the Council for the German-speaking Community for these four Walloon districts. Technically, the German-speaking community is a non-territorial entity, but in practice

geographic concentration has allowed a high degree of territorial self-rule. For most non-cultural policy areas, the Walloon Region is the responsible authority. This is a relatively uncontroversial issue at the moment since the German speakers are concentrated in this area and there are no competing claims over territory or jurisdiction.

## **2. The Netherlands:**

The case of the Netherlands is a well-known example of a ‘consociational democracy’ based on a non-territorial model of conflict regulation. During the 1970s a group of prominent scholars (McRae, Lijphart, Lehmbruch, Daalder, Steiner, Lorwin) formed an epistemic community around the theory of consociational democracy which used the notions of an elite cartel, proportional representation, grand coalitions and depoliticisation to explain political stability in divided societies. There was a theory based on the politics of accommodation at the elite level and separate pillars at the social level. The key elements in this model were; executive power sharing or grand coalition, high degree of autonomy for the segments, proportionality, minority veto, depoliticisation, secrecy, and deference to leaders. The Dutch political system provided much of the inspiration to these consociational democracy scholars:

Similar to many European countries, the ideals of the French Revolution had a huge impact on the Netherlands in the 19<sup>th</sup> century. Human progress was believed to be dependent on rationalist reforms undertaken to fulfil the Enlightenment ideals. The crown joined forces with the liberals in an attempt to create a strong national identity through political activism. Their attempts to create a state-controlled national Church led to the

so-called partition (*Afscheiding*) of the Calvinist Church. The Orthodox broke away and formed their own Church (*Gereformeerde*), while moderate Calvinists remained in the state reformed Church (*Hervormde*). State reform of the educational system was accompanied by wide-ranging reforms of the state infrastructure, bureaucracy, and the public health system. The burgeoning socialist movement also lent support to these liberal reform initiatives. But the two confessional groups, Catholics and Orthodox Calvinists, went on the defensive. The so-called school question (*Schoolkwestie*) led to the emergence of two interesting political partnerships. Socialists and liberals joined forces against the alliance of Orthodox Calvinists and Catholics.

The drive towards the pillarised structure, which forms the building block of the consociational democracy theory, came from the religious side. The leading voice of Orthodox Calvinists, Abraham Kuypers, saw the school question as a battle between Enlightenment activism and tradition. In 1879 the Anti-Revolutionary party (*Anti-Revolutionaire Partij*) was set up which became the strongest opponent of liberal activism. Instead of a single unitary Dutch nation, Kuypers argued that constituent social groups should be allowed to retain sovereignty over their own affairs (*Souvereiniteit in eigen kring*). Following Kuypers' suggestions, Orthodox Calvinists and Catholics went on to form alternative social subcultures to the modernist liberal project. This was the beginning of what is nowadays known as Dutch social pillarisation (*verzuiling*). Dutch Catholics and Orthodox Calvinists barricaded themselves into their confessional ghettos. As a result, the liberal/socialist zeal to reform the country stalled in face of the Orthodox Calvinist and Catholic alliance. Acknowledging their failure to reform the political system, liberals sought a compromise, which led to the so-called Great Pacification

(*Groot Pacificatie*) of 1917 which settled the issues of religious schools, universal suffrage and proportional representation.

In the political system that resulted everyone was a minority. The country came to function in four non-territorial pillars –Calvinist, Catholic, liberal and socialist. These four pillars were tightly organised social groups or subcultures pervasive in nearly every form of social, economic and political activity: schools, hospitals, universities, trade unions, newspapers, broadcasting corporations, schools were all divided along the pillarised social structure. People would live their entire lives within the confines of a homogeneous subculture. Other than the Catholic minority in the south which enjoyed geographical concentration, the system functioned in non-territorial terms.

In the recent decades, the pillarised social structure has been declining. Social and geographic mobility has weakened the system. As a result, competitive party politics has increasingly replaced the consociational practice of politics.

### **3. Switzerland:**

Following a brief civil war, Switzerland drafted a new federal constitution in 1848. For most of its history, religion remained the predominant social cleavage dividing the country almost evenly into Protestants and Catholics. Starting with the end of the Second World War however, religion gradually lost its predominance as the main social divide while language emerged as an important marker of collective identity. Around seventy-five per cent of Swiss are German-speakers; French-speakers constitute twenty per cent of the population inhabiting the six western cantons. Italian speakers are only four per

cent of the population and are concentrated in the southern canton of Ticino (*Tessin* in German and French). Finally a tiny group of Rhaeto-Romansche speakers live in the isolated alpine canton of Grisons/Graubünden forming less than 1% of the Swiss population. The formal federal structure, however, is not based on linguistic constituent communities but cantons. With a population of only seven million, Switzerland has twenty-three cantons (three of which are further divided into half-cantons) ranging from Appenzell-Outer-Rhoden of 14,800 inhabitants to Zurich with 1,170,000.<sup>1</sup>

The Federal Assembly is bicameral. There is a National Council (*Nationalrat* – *Conseil national*) composed of two hundred members and an Estates Council (*Ständerat* – *Conseil des États*) composed of forty-six members representing the cantons, also directly elected. Their joint session in the form of the Federal Assembly (*Bundesversammlung* – *Assemblée fédérale*) elects seven members to the national executive, the Federal Council (*Bundesrat* - *Conseil fédéral*), for four years. The position of the President and the Vice-President rotate between the members of the executive. According to an agreement reached in 1943, the composition of the Federal Council is based on the formula of 2:2:2:1. That is to say, two members come from the Radical Democrats (FDP), two from the Social Democrats (SPS), two from the Christian Democrats (CVP) and one from the People's party (SVP).<sup>2</sup>

The Swiss federal system works mostly on territorial principles; however, there are three cases involving minorities which might have some relevance.

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<sup>1</sup> Six of the half-cantons are: Appenzell-Outer-Rhoden and Appenzell-Inner-Rhoden, Basel-City and Basel-Land, Obwalden and Nidwalden. The remaining twenty are Zurich, Bern, Luzern, Uri, Schwyz, Glarus, Zug, Fribourg, Solothurn, Schaffhausen, St.Gallen, Grisons, Thurgau, Aargau, Ticino, Vaud, Valais, Neuchâtel, Geneva, Jura.

<sup>2</sup> Before 1943, Social Democrats were excluded from the 2:2:1 system of government which existed until then. The practice of the 2:2:2:1 formula, on the other hand, was officialised in an agreement 1959.

### 3.1. Jura:

The French-speaking and Catholic Jura was a part of the Bern canton dominated by German-speaking Protestants. The linguistic tensions underscored by the religious divide always existed but the so-called *l’Affaire Moeckli*, named after the francophone bureaucrat denied a public works position by the cantonal government in 1947, became a turning point for the Jurassian autonomy movement. The first initiative for the establishment of a new Jura canton was defeated in 1959. In 1963, the *Front de liberation du Jura* was formed around which the autonomist movement organised. Finally in 1974, seven districts of the Jura voted for a new canton with 51.9 % of the vote. In 1975, the districts which had voted against the proposal voted in another referendum on whether or not to remain attached to Bern. In 1979, Jura officially became the new member of the Swiss confederation.

### 3.2. Ticino:

Italian-speakers are concentrated in the canton Ticino, thereby allowing for the cantonal boundaries to correspond to the linguistic community. This is a unilingually Italian canton. The only linguistic minority is the German Swiss who own summer houses here, but there are no special linguistic rights entrenched in the cantonal constitution for these groups. Lying south of the alpine Gothard pass, Ticino more cultural interaction with the bordering northern Italian regions.

### 3.3. Grisons/Graubünden:

The case of mountainous canton of Grisons composed of three linguistic communities of German-speakers, Italian-speakers and Romansche-speakers, is an interesting example of diversity. Even in the canton Grisons itself, Rhaeto-Romasche-speakers constitute only 17% of the population. This old Latin language is further subdivided into four distinct dialects (*Surselva*, *Sutselva*, *Surmeira* and *Ladin*). To add to the complicated picture, the tiny Romansche-speaking community is divided into Protestant and Catholic halves. The Romansche community has historically been closer to the German Swiss. In addition to its tiny population and geographical isolation, Grisons is also economically dependent on German Switzerland.

#### **4. Spain:**

Following the death of General Franco, a new constitution was adopted for Spain in 1978 which provided the ‘historical nationalities’ the right of autonomy. Catalonia, the Basque provinces, and Galicia had passed Autonomy Statutes during the Second Spanish Republic (1931-36), hence their ‘historical’ claim for autonomy. However, the constitutional right to autonomy led all the Spanish regions to follow the path of the ‘historical nationalities’ and adopt statutes of autonomy. Some of these Castilian-speaking (those who speak the mainstream ‘Spanish’ vernacular) Autonomous Communities correspond to historical principalities like Leon and Andalucia, others like Cantabria, Murcia and La Rioja are artificial new creations. Currently there are seventeen Autonomous Communities, but their powers are widely different.

Catalonia, the Basque provinces and Galicia run their own educational systems. As economically advanced regions, both Catalonia and the Basque provinces have attracted many internal immigrants from other regions of Spain. These immigrants are offered education in Basque or Catalan if they desire so, but there is no formal division of the inhabitants of these regions into Castilian and indigenous communities. Instead of a bilingualism of two parallel non-territorial communities, the language regimes in these regions seek to make individuals bilingual. The remaining fourteen Castilian speaking regions have standardised much of their educational policies and have invited the central government to run the system. The same process has also taken place in the field of mass media. As a result, the Spanish state of Autonomous Communities is often seen as an asymmetrical system of federalism.

## **5. Non-Territorial Arrangements Elsewhere:**

### 1. A First Nations Province in Canada:

In the Canadian context, the idea of a First Nations' Province has been put forward by Thomas Courchene.<sup>3</sup> Courchene's idea is to build a new Canadian province out of the 2,250 native reserves. The basis for the new entity would be territorial, however, the territory would be composed of non-adjacent pockets of native reserves. The powers of the First Nations' province would be similar to the provincial powers exercised by the existing ten provinces.

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<sup>3</sup> Thomas J. Courchene (1992), *Rearrangements: The Courchene Papers*, Oakville, New York and London: Mosaic, pp. 104-106.

## 2. Indian Federalism:

Following independence in 1947, the new Indian state was formed as union based on the principle of ‘two nations’. But after the secession of the Muslim half of this union to form the new state of Pakistan, contemporary Indian federalism has moved in the centralist direction. There are now 28 states and 7 union territories ruling over a very diverse mix of peoples and languages. But the federal system has increasingly taken on the characteristics of a cooperative federal model based on strong ties between executives at the various levels.<sup>4</sup>

The Indian constitution allows for some recognition of religious-cultural groups on a non-territorial basis. The so-called ‘personal’ laws based on one’s religious community determine the legal aspects of religious observance.<sup>5</sup> This heterogeneity, however, does not translate into a more comprehensive form of membership in a religious/cultural community. The Indian constitution establishes ‘national’ citizenship based on the ‘unity of the nation’.<sup>6</sup>

### 2.1. Darjeeling and Ladakh:

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<sup>4</sup> Mathew, George (2002), “India”, in Ann Griffiths and Karl Nerenberg (eds.), *Handbook of Federal Countries*, Montreal and Kingston: McGill-Queen’s University Press, pp. 162-164. See also, S. Chandrasekar, S. (ed.) (1988), *Indian Federalism and Autonomy*, Delhi: B.R.; R.C. Dutt, R.C. (ed.) (1990), *Centralism and Devolution of Power*, New Delhi: Lancer.

<sup>5</sup> Rama Kant Sinha (1988), “Greater Autonomy for the States to Legislate on Personal Laws: A Suggested Approach”, in U. N. Gupta (ed.), *Indian Federalism and Unity of Nation: A review of Indian Constitutional Experiences*, Allahabad, India: Vohra.

<sup>6</sup> Gupta, U. N. (1988), “Federalism and Unity of the Nation: A Review with Reference to Religion, Language, and Residence”, in Gupta (ed.) (1988), *Indian Federalism and Unity of Nation: A review of Indian Constitutional Experiences*, Allahabad, India: Vohra.

The cases of Darjeeling and Ladakh are both territorial forms of recognition of identity. But the recognition of the local languages of these regions was incorporated into the 8th Schedule of the Indian constitution, thus giving them a non-territorial form of recognition. In the recent years, the number of languages recognized by the constitution has risen to 18.

The autonomous councils in both the Darjeeling region of the Indian state of West Bengal, and the Ladakh region of the state of Jammu and Kashmir are products of the 1992 constitutional reform. They are examples of the recent experiments with self-government in India. In the 1990s, India has given a number of remote tribal regions some limited form of regional autonomy. Rather than the quest to devolve power to ethno-linguistic communities, this process seems to be a response to the ideas of ‘decentralization and democratic empowerment’ advocated by the World Bank and a number of NGOs. These ideas stress the relationship between development and participation in local governance.

In 1992, under the so-called ‘new policy agenda’ (*panchat raj*), the Indian government passed two resolutions aiming to encourage local self-government and bring in a new era of local participation in politics. The subsequent 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian constitution gave local self-government constitutional recognition. This measure, however, requires state legislation to be put into practice.

In 1993, the West Bengali government passed the Municipal Act of West Bengal in effectively putting the local government act into action. The mountainous Darjeeling district in the north of West Bengal bordering Bhutan thus acquired local autonomy under the auspices of the Darjeeling Gorkha Hill Council (DGHC).

The Ladakh region in the Indian state of Jammu and Kashmir is another example of recent decentralization in India. This is a sparsely populated trans-Himalayan region bordering Tibet and Pakistan. In 1995, the government of Jammu and Kashmir gave this region autonomy through the creation of the Ladakh Autonomous Hill Development Council (LAHDC).

Both autonomous councils are run by governing boards composed of a majority of directly elected members with some appointed by the state governors. The powers of the councils cover the day-to-day management of local government responsibilities, such as planning, water, sanitation, transportation, and power. However, in general the autonomy enjoyed by the district or regional councils seems to be rather limited.

### 3. Lebanon:

The former Ottoman province of Lebanon retained the Ottoman *millet* system following its independence. A modernised version of the millet system came to function in consociational form. The country was divided into three main religious/cultural groups on a non-territorial basis. Sunni Muslims, Shia Muslims and Christians retained parallel social structures but shared political power at the top. In addition, there were smaller communities like the Druze and the Armenians who were also part of this consociational regime. Political posts were divided according to the principles of parity at the top and proportionality at the lower levels. For many years, Lebanon was seen as an example of peaceful coexistence in a deeply divided society. But in the 1970s, the fragile system

started to show signs of distress. In the 1980s, a brutal civil war led to the demise of the consociational regime.

#### 4. Cyprus:

Until the 1970s, Cyprus was studied together with Lebanon as an example of consociational compromise, but the island faced a similar breakdown of consensus. In return for British support against Russia, the Ottoman state had given Britain administrative control over the island at the Congress of Berlin in 1878. As a result of the tripartite meetings between Britain, Greece and Turkey in 1959, the island became independent in 1960. The political system was based on the recognition of two non-territorial component nations. However, the history of the Cypriot state was one marked by intercommunal conflict leading to large communities of internal refugees. Torn between the two extremes of *enosis* (union with Greece) and *taksim* (partition), relations between the communities steadily deteriorated. The constitutional crisis of 1963 ossified the bicomunal division. The final blow to the Cypriot federation came with the Greek-Cypriot military coup in 1974 aiming to unite the island with Greece and the Turkish military intervention which followed, effectively dividing the island in two.

Since 1974 the two sides have been unable to agree on a solution to reunite the island. The Greek-Cypriots and the Turkish-Cypriots have widely divergent perceptions as to what constitutes a just and viable constitutional solution. The minority Turkish Cypriots, fearing the Greek majority, advocate a confederal solution. Greek Cypriots, on the other hand, are in favour of a federal system for the whole of the island.

#### 5. Post-Soviet Baltic Republics:

Following the end of the Soviet Union, the three newly independent Baltic republics of Latvia, Estonia and Lithuania were left with large Russian-speaking populations. These communities were settled here by the Soviets after the Second World War and thus, were not historical communities with territorial concentration. The response of the new regimes ranged from Lithuania's offer of citizenship to anyone who resided there to Latvia's restrictive citizenship policies and language tests. In general, there is no constitutionally defined minority rights for Russian speakers as constituent 'nations' in these Baltic republics, and the general pattern seems to be the expectation that Russian-speakers will either assimilate or 'return' to Russia.

#### 6. Åland islands:

The Åland islands in the Baltic belong to Finland, but have a Swedish speaking population. The Swedish-speakers here have special minority rights in education, culture and media. Similar minority rights exist for Swedish-speakers in southwest Finland, particularly Turku. But other than the right to maintain educational and cultural institutions, these groups are not recognised as distinct non-territorial constitutional units.

#### 7. South-Tyrol / Alto-Adige

At the end of the First World War, Austria lost the southern half of its province of Tyrol to Italy. German-speakers in South Tyrol (*Alto-Adige* in Italian) have special linguistic rights in the district. The Italian government pursued a policy of encouraging Italian emigration into this region in the 1930s, and this led to increasing tensions between

Austria and Italy. But at the moment, a system of *modus vivendi* seems in place. The miniscule size of the district and its geographical isolation are probably factors which account for this.

## II. HISTORICAL EXAMPLES

### 1. The Austria-Hungarian Empire:

Around the turn of century, a number of Austrian intellectuals tried to devise mechanisms to keep the Austria-Hungarian Empire together. This heterogeneous Empire comprising Czechs, Slovaks, Poles, Ukrainians, Slovenes, Croats, Serbs, Bosnians, Romanians, Italians, Hungarians and of course, Germans, had come under strain in face of increasing ethno-nationalism. Austro-Marxists like Karl Renner<sup>7</sup> and Otto Bauer<sup>8</sup> advocated a political system based on the ‘principle of personality’ and cultural sovereignty. This was an attempt to surpass the problem of territoriality based on the notion of self-contained linguistic areas. The Austria-Hungarian Empire lacked such a neat territorial division, so the Renner and Bauer thought of nationality and national rights in non-territorial terms. Despite their radical epithet, Austro-Marxists were in fact a moderate offshoot of reformist social democracy. Karl Renner later would become the first President of the Austrian Republic formed after the First World War.

According to Renner and Bauer, the system of cultural autonomy would be based on the principle of personality. That is to say, individuals would declare their ‘nationality’ to competent authorities and register with their national community of

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<sup>7</sup> Renner, Karl (under the *nom de plume* Rudolf Springer) (1902), *Der Kampf der österreichischen Nationen um den Staat*, Vienna and Leipzig.

<sup>8</sup> Bauer, Otto (1924) [1907], *Die Nationalitätenfrage und die Sozialdemokratie*, Vienna.

choice. The personality principle aimed to constitute nations on the basis of the free association of individuals regardless of where they lived. The ‘nations’ would then be given exclusive powers in a number of policy areas (mostly education and culture) where they would have their own legislative, administrative and executive institutions. This system was to be accompanied by proportional representation at the level of the Empire through national lists, and proportionality in public administration. Alfred Pfabigan sums up the model envisaged by Karl Renner:

Renner posits the idea of democratic federal state of different nationalities composed of supraterritorial nations, each with its own legal personality. Every inhabitant of this state is to choose his ‘own’ state and have the right to be registered on the appropriate nationality roll... In accordance with Renner’s personality principle, nationality is no longer determined by birth or place of residence, but by the free expression of the will of the individual.<sup>9</sup>

In 1905, the Moravian school system was divided between Czechs and Germans along the ideas of Renner and Bauer. But through implementation, the system gradually moved from personal choice towards the direction of obligatory membership, and finally in 1911 became a system based on the mandatory attribution of membership. At the end of the day, Austro-Marxist ideas based on principles of personality and autonomy were never put into practice in systematic form, so we do not know if they could have saved the Austria-Hungarian Empire. But there is a rich literature put together by Austro-

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<sup>9</sup> Pfabigan, Alfred (1991), “The Political Feasibility of Austro-Marxist Proposals for the Solution of the Nationality Problem of the Danubian Monarchy”, in Uri Ra’anana, Maria Mesner, Keith Armes and Kate Martin (eds.), *State and Nation in Multi-ethnic Societies: The Breakup of the Multinational State* Manchester and New York: Manchester University Press, 53-63, p. 57.

Marxists around the turn of the century dealing with the questions of non-territoriality and representation.<sup>10</sup>

## 2. Ottoman Empire:

Probably the inspiration for the personality principle put forward by Austro-Marxists came from the *millet* system of religious/cultural self-rule employed by the Ottoman Turks. The Ottoman system was based on a similar idea of non-territorial representation, and for centuries Ottomans and Habsburgs had interacted in the Balkans either as adversaries or allies.

The Ottoman system was based on the coexistence of religious/cultural communities called the *millets*, literally ‘nations’, which were given religious and cultural autonomy. During most of its history, the millet system led to the peaceful but separate and parallel coexistence of diverse communities in the Ottoman Empire. In addition to running their own education systems and religious organisations, the millets administered aspects of the civil law as well. Issues like family law and inheritance were within the prerogatives of these communities. Membership in the millet followed the personality principle and was not territorial.<sup>11</sup> It should be noted, however, that the personality principle did not bring in full equality to the various millets. Assimilation into the Turkish-speaking Sunni Muslim ruling class was encouraged, but reverse assimilation

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<sup>10</sup> Hanf, Theodor (1991), “Konfliktminderung durch Kulturautonomie. Karl Renner's Beitrag zur Frage der Konfliktregelung in multi-ethnischen Staaten”, in Erich Fröschl, Maria Mesner, Uri Ra'anan (eds.), *Staat und Nation in multi-ethnischen Gesellschaften*, Vienna: Passagen Verlag, pp. 61-90.

<sup>11</sup> Inalcik, Halil (1977), “Centralisation and Decentralisation in Ottoman Administration”, in Thomas Naff and Roger Owen (eds.), *Studies in Eighteenth Century Islamic History*, Carbondale and Edwardsville: Southern Illinois University Press.

into Christianity and Judaism was not tolerated. There were certain restrictions on non-Muslims. Instead of the military service compulsory for Muslim men, Christians and Jews paid a poll tax, and they were also forbidden to carry weapons.<sup>12</sup>

In the 19<sup>th</sup> century, the millet system came under strain as nationalist movements engulfed the diverse ethnolinguistic population of the Ottoman Empire. In order to reform the system and introduce civil equality, the Ottomans passed two major constitutional reforms in 1876 and 1908.<sup>13</sup> These reforms established a legal and administrative framework uniting the Empire, together with an updated model of the millet system in the form of cultural autonomy. Various ethnic groups –as religious communities started to break up along ethnolinguistic lines- were given proportional representation in the political and administrative structure of the Empire. Ideas of communitarian devolution and federalism became the key words for those who wanted to keep this heterogeneous union together. But just like the Austria-Hungarian Habsburgs, the Ottoman reforms did not survive the First World War.

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<sup>12</sup> Braude, Benjamin and Bernard Lewis (1982), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*,

<sup>13</sup> Keyder, Çağlar (1997), “The Ottoman Empire”, in Karen Barkey and Mark von Hagen (eds.), *After Empire: Multiethnic Societies and Nation-Building. The Soviet Union and Russian, Ottoman and Habsburg Empires*, Boulder, Colorado: Westview.