

NON-TERRITORIAL AUTONOMY AS AN ENRICHMENT OF
REPRESENTATIVE DEMOCRACY

NETERITORIJALNA AUTONOMIJA KAO OBOGAĆIVANJE
PREDSTAVNIČKE DEMOKRATIJE

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EDITORS' NOTE



This thematic issue brings together five scholarly articles, each tackling from both theoretical and practical perspective a sensitive and elusive issue of accommodating minority rights within a wider national and political framework. These timely considerations are framed through a broader, vibrant and rapidly emerging approach of non-territorial autonomy (NTA), which is not so much a particular model but a generic term that refers to different practices of minority community autonomy that does not entail exclusive control over territory. In this way, novel forms of national self-determination can take place while the self-determining communities reside in shared territorial spaces. NTA can thus have a number many different forms such as consociationalism, national cultural autonomy, and can be particularly well suited for communities or nations that do not live in a unified or joint territory but are territorially dispersed or scattered. In terms of political representation, NTA can also involve novel forms of representation that de-territorialise representation, as with indigenous communities, the juridical autonomy of religious communities, or in the practice of many forms of secular community representation that blend or mix collective and individual rights or modifies the modality of one person one vote, in proposing collective community representation. In that, NTA enhances democracy by eliminating potential dictatorships of the majority by creating communitarian rather than territorial modalities of representation. Thereby, while still relying on the existing state to search for the solutions of minorities, NTA rescinds the idea that popular sovereignty is one an indivisible and introduces instead the idea of shared sovereignty between the participating communities in a particular state. This a crucial modality to prevent secession of disgruntled national minorities (Nimni 2020).

NTA thus transforms nation states into plurinational states, which allows for the integration and active participation of national minorities (see Keating 2001). Not all forms of plurinational democracy are associated with forms of NTA, but all forms of NTA are associated with plurinational democracy. The emergence of NTA at different times and in different parts of the world, results from a democratic deficit of the nation-state, particularly in its liberal

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democratic form. This democratic deficit results in the conflating of Ethnos with Demos, creating a sense of alienation or worse among national and ethnic minorities. A viable solution to this problem is transforming nation-states into plurinational states, so that participating communities no matter of their numerical proportion, have some collective representation in the process of decision making and symbols of the democratic state. A Plurinational Democracy is a multi-sovereign state in which legal pluralism and constitutional diversity can accommodate multiple nationality claims. Minority nationalisms do not and must not always entail demands for separate statehood. NTA and asymmetrical constitutional arrangements can provide means of accommodating plural national claims.

More specifically, this special issue came about as a result of the COST 18114 Action ENTAN – the European Non-Territorial Autonomy Network, launched in 2018. COST stands for the European Cooperation in Science and Technology, which is a funding organisation for research and innovation networks; primarily envisaged as a four-years bottom-up networks that help connect research initiatives across Europe and beyond, it enables researchers and innovators to grow their ideas in any science and technology field by sharing them with their peers through conferences, meetings, trainings and short research stays. The ENTAN action and its network – currently gathering more than 100 members from over 30 European countries – aims at examining the concept of NTA, particularly focusing on NTA arrangements for reducing inter-ethnic tensions within a state and on the accommodation of the needs of different communities while preventing calls to separate statehood. The Action tackles recent development in the theories and practices of cultural diversity; minority rights (including linguistic and educational rights); state functions and sovereignty; conflict resolution through policy arrangements; policymaking and inclusiveness. The main objective is to investigate the existing NTA mechanisms and policies and to develop new modalities for the accommodation of differences in the context of growing challenges stemming from globalisation, regionalisation and European supranational integration. The network fosters interdisciplinary and multidisciplinary group work, and provides for training and empowerment of young researchers, academic conferences and publications, as well as for the dissemination of results to policy makers, civil society organisations and communities.

In particular, this thematic issue stems from the First ENTAN conference *Non-Territorial Autonomy as a Form of Plurinational Democracy: Participation, Recognition, Reconciliation*, held in Belgrade on 22 and 23 November 2019. The aim of the first ENTAN conference was to examine how and in what context modalities of NTA can improve the value of democratic participation in Europe, by enhancing the collective incorporation of national minorities. The conference also evaluated the relation between democracy and collective rights, and how NTA can improve minority recognition and foster reconciliation in areas of conflict, and addressed both theoretical questions and empirical case studies.

As this conference indicated, the problem of scattered minorities' representation is not new, and there have been historically, important attempts to create modalities of national self-determination that do not require the creation of nation states. Among the most influential are the National Cultural Autonomy (NCA) model developed by the Austrians Otto Bauer and Karl Renner, the latter being a former president of Austria. However, while NCA was for a period important and influential in Central and Eastern Europe, it had limited influence in Western Europe and other parts of the world. There are also many other modalities of NTA that emerge simultaneously in different parts of the world, showing that the problem of minority self-determination is recurrent in many different countries. Papers by Pavlović and Ćeriman, Shikova and Burç, responded to this call and were previously presented at the conference. In compiling this issue, the editors complemented these articles by two contributions of Máiz and Pereira and Arzoz, which were not part of the conference itself.

The first two articles revisit the main concepts in the works of the two NTA pioneers and founding figures respectfully: Otto Bauer's (1881-1938) concept of plurinational federalism and Karl Renner's (1870-1950) idea of national autonomy. Approaching the former, Ramón Máiz and María Pereira in their contribution "Otto Bauer: The Idea of Nation as a Plural Community and The Question of Territorial and Non-Territorial Autonomy" re-examine his idea of a nation as "a community of destiny that generates a community of character". They see in his writings a tripartite conception that is far from culturalist reductionism, accounting for a number of economic, cultural and political factors involved in a complex and open political process of national construction. As they show, Bauer's fundamentally ascribed to Austromarxist view that "what unifies the nation is neither the unity of blood nor the unity of culture, but the unity of the culture of the ruling classes"; accordingly, the only right way to achieve genuine national community is, according to Bauer, by including the totality of the working classes by means of their conversion into a national class and through access to participation in the production of cultural goods.

In identifying Bauer's novel and relevant contributions, the authors point to his rejection of the ethnic homogeneity of territories. In his understanding, it was necessary to account for a paradigmatically modern phenomena of many border areas in which human beings of different cultures and nationalities mix due to economic transition, migrations, wars etc. and have plural identities. With this in mind, Bauer proposes his redesigning of the State in a form of multi-national state, which "constitutes a complex and conflicting democratic challenge: the possibility of accommodating different nationalities on an equal footing". Such accommodation of minorities through mechanisms of territorial and non-territorial autonomy, in authors' view, is regaining prominence in today's world, both in political theory and in comparative politics.

Xabier Arzoz's article "Karl Renner's Theory On National Autonomy" complements the previous discussion by presenting the main concepts of Renner's theory of national autonomy: his 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. Similarly to Bauer, Renner understood the nation as a conscious cultural community, and wished to transform the Habsburg empire into a democratic monarchy run through autonomous national councils as basic federal elements. Opting for a legal recognition of the nation in the form of self-administrative body within Habsburg Austria, Renner thus conceived national autonomy 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".

As Arzoz explains, Renner believed that such restructuring of the state would prevent two dangers that still concern today's studies on federalism: the domination of majority over the minority, and autonomy leading to the secession of the minority nation. In short, the author persuasively argues that, contrary to common views, Renner was not opposed to territorial autonomy, considering it as the best but rarely achievable goal because nations mostly live in mixed communities. Thus, the author concludes that "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" which is still inspirational for accommodating diversity in multi-ethnic states.

Rosa Burç's "Non-Territorial Autonomy and Gender Equality: The Case of the Autonomous Administration of North and East Syria-Rojava" offers an interesting discussion of the most recent developments of the Kurdish question in Syria. According to Burç, the Kurdish-led autonomous entity called Autonomous Administration of North and East Syria (NES) – also known as Rojava – considers women's liberation as an imperative condition for shaping a democratic society and introduces a novelty in the role of women as active agents in building a plurinational democracy. As she claims, "the Rojava model goes beyond the Kurdish question and can be considered an attempt to resolve a democratic deficit of liberal democratic nation-states through bringing together solutions that address the intertwined subordination of minorities and women." Starting with a brief contextualization of the so-called Kurdish question within the scholarly context, the article praises Rojava as a valuable experiment in grassroots democracy, decentralization, women's autonomy and minority protection evolving from an on-going war. As she argues, within the Rojava model there are two parallel set of structures, institutions that include men and women and women-only institutions. While being represented in the women's confederation, all women continue to maintain their autonomy as members of the respective institutions they are coming from. Burç claims that the dynamical structure of Democratic Autonomy with a strong emphasis on women's self-reliance as a revolutionary act of emancipation for both men and women, is what distinguishes the Rojava project from other modalities of Non-Territorial Autonomy. Moreover, she ambitiously argues that "NTA can only fulfill its democratic promise of equal participation and representation,

if the definition of subordination is extended beyond the category of minorities, incorporating subordinate groups within society that are not necessarily defined through ethnic and religious subjectivities, as the example on women's representation in Rojava has demonstrated.”

Aleksandar Pavlović and Jelena Čeriman in their paper *Beyond the Territory Principle: Non-Territorial Approach to the Kosovo Question(s)* probe the applicability of the NTA arrangements on resolving the Kosovo dispute between Serbs and Albanians, with particular focus on cultural and religious heritage. According to their understanding, the Kosovo issue actually comprises three rather distinctive problems: 1) the status of Northern Kosovo which is ethnically Serbian and still maintains various ties with the Serbian state, 2) the status of Serbian cultural and religious heritage, chiefly UNESCO world heritage Serbian medieval monasteries and churches and 3) the fact that Serbian population in central Kosovo, where most of the mentioned monasteries and churches are located, are inhabiting small municipalities or enclaves of Serbs surrounded by vast Albanian population. As they argue, the NTA approach is not equally applicable to all of these issues; it is less applicable to the question of Serb-dominated Northern Kosovo which, as they rightfully point out, dominates the public discourse and overshadows the other issues.

In approaching this issue, they rely on the recent work of Palermo (Palermo 2015), who distinguishes an autonomy granted to a certain territory/territorial unit, from an autonomy granted to a specific ethnic group, that is, between autonomy granted *to a territory* and all of its inhabitants (‘autonomy to’) and autonomy granted *to an ethnic group* that constitutes the majority within a territory (‘autonomy for’). Further, they examine the applicability of the NTA concepts to the Kosovo issue by analysing several key legislative documents and legal framework surrounding Serbian cultural and religious heritage in Kosovo, its preservation and protection, particularly of Serbian Orthodox monasteries, churches and other historical and cultural sites, and compare these legislation to the existing legal NTA solutions in Croatia and in Montenegro. Ultimately, they pointed to the potential to combine territorial (devolution of key functions to municipalities) and non-territorial approaches as a means of securing the rights of the remaining Serb population, notwithstanding the continued obstacles to its proper implementation. Their article, therefore, brings a welcome change in the halted Serbian–Albanian dialogue by focusing on the NTA approach to Serbian enclaves and heritage in Kosovo.

Last, but not the least, Natalia Shikova in her article “The Possibilities and Limits of Non-Territorial Autonomy in Securing Indigenous Self-Determination” analyses the NTA possibilities in reaching indigenous self-government and reveals the dilemmas about the applicability of NTA in securing the right to self-determination to the indigenous peoples, with particular focus on the Sámi people from northern Norway, Sweden, Finland and Russia. As she reminds us, indigenous people – defined as first or original inhabitants, or the descendants of the peoples that occupied a given territory when it was invaded, conquered or colonized – are neither majority nor minority, but form a third

category. In researching the NTA features and its possibilities in securing indigenous communities' self-government needs, she focuses on the Sámi Parliaments functioning in the three Scandinavian countries (Norway, Sweden, Finland). Notwithstanding the firmer position of the Norwegian Sámi Parliament within the system of governance, she still concludes that, in general, the Sámi Parliaments are mainly consultative or advisory bodies rather than self-governing institutions. Even though she admits that these institutions helped in improving the legal position of the Sámi, they do not reach the goal of indigenous self-determination and have limited capacities, lack decision making power (in Sweden) or have a very limited one (in Norway) and do not secure the indigenous people granted right for use of the land and traditional territories. Thereby, she concludes that, notwithstanding positive examples and success of some NTA institutions related to the ingenious peoples (e.g. Sámi Parliaments), the question still remains if NTA holds sufficient potential for addressing the indigenous needs uphold by the internationally granted "right to land, territories and traditionally owned resources".

Taken together, all five articles set an ambitious task of theorizing the question of accommodating minority rights in a broader (supra)national and political framework, and exemplifying it on particular cases spanning from the question of Sámi people and indigenous rights in the Nordic region, over Austria-Hungary, Kosovo and the Balkans, to Syria and gendering the NTA and the Kurdish question. In approaching these issues of accommodating diversities, these articles examined various NTA arrangements and novel political forms ranging from national cultural autonomy, over democratic confederalism and plurinational states and plurinational democracies, to gender and women rights.

In approaching these issues, the implied premise was that NTA is not a universally applicable solution that could be easily applied anywhere and everywhere, but that it should better be seen not as a conceptual opposite to territorial autonomy, but as something that complements it, as is indeed the case in practice across a range of contemporary contexts in Europe and beyond (see: Smith, Ioannidou and Hudson 2020: 41). Thus, while these articles, particularly selected case studies, do not work on cases traditionally captured under the rubric of 'non-territorial autonomy', the understanding of this term had broadened considerably in recent years (see Malloy, Osipov and Vizi 2015), making it a useful framework within which to consider a whole range of issues across different contexts, be they socio-linguistic or pertaining to religious identity. In this respect, we believe that this thematic issue amply shows, as Smith and others (2020: 39) observe, that governance of ethno-cultural diversity remains a key task for all contemporary states. All this makes the questions considered by this thematic issue of *Philosophy & Society* vibrant and contemporary, and calls for further research in this field.

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