

# Nation and Nationality, National Unity in the Central European Region



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## ABSTRACT

Any work that takes a thorough look at the problem of nationality requires a kind of common ground in the form of a consensus about such basic terms as people and nation. In the Austro-Hungarian Empire the main problem was the complexity of factors and the lack of unity, which also affected Austria's special matter of nationality. Specifically, Austria witnessed the mutual opposition of three elements. Amidst the conflict of different ethnic groups and the historical kingdoms and provinces with the central power, ethnic groups made increasingly significant and radical demands as opposed to the other two groups. While this work also seeks to use consistent terms, it shifts the focus from the creation of unambiguous definitions to generally recognised historical development processes, such as the role of the slogans of popular sovereignty and equal rights in the definition of nation, and to trends in the scholarly interpretation of people and nation in the 19<sup>th</sup> century.

## KEYWORDS

Nation; Nationality; National Unity; Central European Region; Federalism

From the birth of the modern concept of nation to the collapse of the Austro-Hungarian Empire, there was hardly any other historian or scholar of a different origin doing research into the problem of nationality who did not deal with the fundamental issues in some way, whether by creating more or less successful individual definitions of the existing terms or relying on previous attempts to define the phenomena of nation and nationality.

Nation and nationality are the products of social development so they can only be defined in the given geographic and chronological setting. In other words, one of the ways to define “nation” and “nationality” as used in the 19<sup>th</sup> century Habsburg Empire is to look at the theories of the two terms in that period.

The nation as the basic principle of organising social groups and states had become so dominant by the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries that it was the first to question the common imperial ideology in the Austro-Hungarian Empire and eventually exceeded it as a factor of state organisation. While scholars in the Austro-Hungarian

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nation state clearly recognised<sup>2</sup> the political “force” underlying the nation, which had become significant due to the evolutionary and revolutionary events that took place during the social, economic, and political processes since the 1789 French Revolution determined “nation” as an unquestionable basic principle, the proposed theoretical solutions were unable to exert sufficient pressure on the Empire’s political practices. In late 1917, Karl Renner described the interpretation of nation as used since the French Revolution as follows:

“It is the nation and only the nation that has the right and power to act upon its own initiative. It is not subject to any power, whether sacred or secular. And whatever is under the nation only has force by the nation’s authority and tolerance.”<sup>3</sup> Here Renner is talking about a “political” or active nation as opposed to the common meaning of the term until the late 18<sup>th</sup> century. Renner called this previous concept “civic nation”<sup>4</sup> whose most salient feature is its passive nature.<sup>5</sup>

This paper is not concerned with the reasons why the nation had not become a relevant basic principle during human cohabitation before the 19<sup>th</sup> century but it offers a brief overview of the models regarding the emergence of nation and national consciousness.<sup>6</sup> In view of its historical origin, the organic and continuous development of the concept of nation was primarily spelt out by Leopold von Ranke. He and his followers look at the nation as one in a state of development that does not break away from older forms of organisation in any way. Another model postulates the nation as a supra-historical category that is independent from historical development.

The last group includes historians who regard the nation and national consciousness as an absolute novelty since the late 18<sup>th</sup> century. As with most models of thinking, we should take care when applying any of the three models to historical reality. The approach to the problem of nationality was more structured in the old Austria than what the above schemes offer.

The meaning of the term *nation* had not become politically relevant until the 19<sup>th</sup> century although national ideas had been promoted by the Illumination. Just why the concept played a key role in the 19<sup>th</sup> century is something caused by economic and social reforms. In the economy, for instance, the political changes were brought about by the disappearance of home economies, the emergence of major production units, and the existing economic conditions. The birth of new ideas, such as popular sovereignty and the equal rights of citizens, had created the image of a common nation in the French Revolution, where the term *nation* was used to mean a political community created by *volonté générale* (J. J. Rousseau, E. Renan).

2 Vö. Wenzel Frind, *Das sprachliche und sprachlich-nationale Recht in polygotten Staaten und Ländern mit besonderer Rücksichtnahme auf Oesterreich und Böhmen* (Wien 1899), 3 f.

3 Karl Renner, *Das Selbstbestimmungsrecht der Nationen in besonderer Anwendung auf Oesterreich. Teil I: Nation und Staat* (Leipzig und Wien 1918), 9 f.

4 U.o., 8 f.

5 Vö. Friedrich Meinecke, *Weltbürgertum und Nationalstaat*, In: Friedrich Meinecke, *Werke*. Bd 4, hgg. Und eingeleitet von Hans Herzfeld (München 1962), 15 f.

6 Vö. Moritz Csáky, *Nation und Nationalstaat. Gedanken zur Genese des neuheitlichen Nationsbegriffs*. In: *Integratio. Die Volksgruppen in Österreich* (Wien 1979), 15–22 ff.



At that time, the feeling of national unity could only rise after estate society collapsed. In Europe, the newly arisen, politically motivated national feeling gained strength and developed further under the influence of two factors. One was the Napoleonic wars, which touched off national resistance in the affected territories. The other was related to cultural history, the period of romanticism, which made German speaking cultures the first ones to look at the terms *nation* and *people*. Herder, the father of German language explanations that had national values, created all conditions for what would become irrational nationalism by defining *people* in terms of cultural and biological characteristics.

Central and Eastern Europe's romantic term of nation and the predominance of German literature on the notions of *people* and *nation* rest on two pillars. Firstly, the outstanding significance of romanticism, which captivated people and still ensures the primacy of this period in German intellectual history. Secondly, ethnic-national groups in the first half of the 19<sup>th</sup> century exceeded the limits of small states that would merge to become a major political unit.

As opposed to the situation in Western European states, the lack of political agreement in national terms led to the "use of the German language" recognised throughout the 19<sup>th</sup> century, where *nation* referred to common origin and hence common ethnic origin and the consequent ethnic and cultural relationship. The term also included tribal affiliation whereas *people* meant 'political union'. As opposed to this Eastern and Central European theory, in the areas where a cultural union arose based on a political alliance,<sup>7</sup> i.e. in the English speaking world and partly in Romania, a uniform theory of political and cultural alliance was created. Both were designated by the term *nation*. In this Western theory, the term *nation* meant affiliation to a political union, citizenship,<sup>8</sup> which prevented the registration of any nationality in official censuses from becoming a political matter in national conflicts. On this view, the term *nation* meant people of the same citizenship and thereby created a definition that did not offer any solution to the Austro-Hungarian nation state.

The Austro-Hungarian Empire's common imperial ideology was unable to enforce the concept of nation that would have logically been in the state's interest against the particular interests of individual ethnic groups and historical nations:

"Wir können immerhin diese Empiree als Einheitstaat declarieren können, ihr eine Verfassung geben, welche im Punkte der Centralisation sogar die französische noch hinter sich zurücklässt, können ihr Gebiet mit Winkelhaken und Lineal in correcte Quadrate theilen, oder ihre einzelnen Länder nach den verschiedenen Nationalitäten zerstückeln. Zuall' dem braucht man sogar verhältnissmässig wenig Zeit. Aber den Begriff, welchem 35 Millionen Menschen mit dem Worte Vaterland verbinden, diesen Begriff, so irrig oder veraltet er auch sein möge, vermag keine Macht und kein Raisonement plötzlich umzuändern, und dieser Begriff ist, vielleicht das einzige Erzherzogthum Oesterreichs ausgenommen, nicht mit dem

7 Rudolf Hermann v Herrnherr, Nationalität und Recht dargestellt nach der österreichischen und ausländischen Gesetzgebung (Wien 1899), 16 f.

8 Renner, Selbstbestimmungsrecht der Nationen, 12 f.



gesamten Reiche, sondern mit der einzelnen Provinz verknüpft.”<sup>9</sup> (Nevertheless, we may declare this monarchy as a united state and may give it a constitution which surpasses even the French Constitution in terms of centralisation, and we may use a sextant and a ruler to divide it into exact squares or break up its provinces according to the different nationalities. Indeed, we need relatively little time for that. But the concept that 35 million people relate to the term *homeland*, whether erroneously or archaically, cannot be altered by either power or reasoning all of a sudden, and it is not related to the overall empire but only to its individual provinces, maybe except for the only archduchy of Austria.)

In the debate on nationality statistics at the London Congress of Statistics, the French delegate Legoyt firmly rejected the registration of nationalities on the grounds that he only knew a single nationality in France.<sup>10</sup>

The Congress of Statistics looked at the methodological questions of demographic statistics in London as had its previous editions both in Brussels (1853) and in Vienna (1857). All efforts to define the terms *nation* and *people* and most opinions in scholarship and the press on the matter gave rise to a methodological debate in this period while the essence of the question of nationality was pushed to the background.

At that time, people found that national movements aimed to acquire political power and exercise political rule.<sup>11</sup>

The desire for national equality included efforts to gain supremacy over national minorities as national feelings were primarily based on the belief in “eigene Größe” (individual greatness) as explained by Gustav Rümlein in his 1872 “Rede über den Begriff des Volkes” in interpreting the term *people*:

“Am liebsten würden wir den Schmuck dieses Namens ganz jenen Gruppen der Menschheit vorbehalten, welche eine eigenthümliche Anlage an Geist und Gemüth in festen und bleibenden Formen auszuprägen vermochten...”<sup>12</sup> (We would prefer to reserve the glitter of this word only for groups of humanity that are able to express their special intellectual and spiritual endowments in a fixed and lasting form...).

This idea was recognised and analysed as early as 1851 by the Hungarian politician and statesman Baron József Eötvös: “Die Grundlage aller nationellen Bestrebungen ist das Gefühl höherer Begabung, ihr Zweck ist die Herrschaft.”<sup>13</sup> (The foundation of all national efforts is the feeling of an outstanding ability and its goal is to rule.)

Eötvös not only expressed the principle of individual superiority as the basic principle of nationalism, an excessively one-sided interpretation according to 19<sup>th</sup> century scholarship, but also went as far as to make a claim so far rejected in the Austrian Republic, namely that the adoption of the majority principle based on demographic statistics cannot be applied in matters of nationality. At the same time, the debates between nationalities could not have systematically been solved

9 Joseph von Eötvös, Die Nationalitätenfrage. Überetzt von Max Falk (Pest 1865), 129 f.

10 Fr. J. Neumann, Volk und Nation S. (Leipzig 1888), 131 f.

11 Vö. Renner, Selbstbestimmungsrecht der Nationen, 7 f.

12 Gustav Rümlein, Reden und Aufsätze Bd. I. (Freiburg i./b. und Tübingen 1875), 91 f.

13 Joseph von Eötvös, Über die Gleichberechtigung der Nationalitäten in Österreich (Wien 1851), 17 f.



amidst the nationality conflicts in Austria without explicit precautionary measures to defend minorities speaking other languages because Eötvös primarily considered the essence of the national principle as “the attempt to obtain power”.

In fact, what prevented the solution for the problems of Austria’s legal and social systems was the dynamics of the issue of nationalities.

So far no mention has been made of the terminological difficulties faced by all branches of science that came into contact with the terms of *nation* and *people* in the early 19<sup>th</sup> century. The fact that the issue of nationalities gained political strength in the 19<sup>th</sup> century brought about the need for uniform scholarly terminologies. The process of seeking a consensus over the issue has not finished to date but some fundamental works of ethnography, statistics, sociology, and law already used universally accepted terms in the latter half of the 19<sup>th</sup> century.

Previous authors such as Fichte, Mohl, and Ahrens had not made any distinction between *nation* and *people*. The use of these terms was only differentiated from the mid-19<sup>th</sup> century. One way of doing this was to conceive the nation as a political entity and to postulate it as a natural entity. On this view, people became part of the nation’s status as a state and political entity:

“...; es ist die Institution des Staats, in welcher ein einheitlicher, ordnender, intelligenter Wille der Kräfte, Anlagen und Richtungen eines Volkes zur realen äußeren Gestaltung bringt, und das Volk zu einem beseelten, persönlichen Wesen wird.”<sup>14</sup> (... the institution of the state where a uniform, arranging, and intelligent will gives a realistic external form of appearance to a people’s force, abilities, and orientations to make such people a lively, personal being.)

This theory, which views the nation as a state unit, has the same consequence for the concept of nationality as Western approaches to nationality. In other words, both theories resulted in the coincidence of citizenship and nationality. As the actual conditions did not allow for such final conclusion for the region of Eastern and Central Europe, Eötvös already used the terms in his “Über die Gleichberechtigung der Nationalitäten in Österreich” (About the equal rights of nationalities in Austria) that most terminologists recognised as a basic principle and later even justified theoretically.<sup>15</sup>

By contrast, the term *people* meant a political entity as described by Fr. J. Neumann in his “Volk und Nation”: “Und in dieser Beziehung ist Volk heute erstens der spezifische, unter allen Umständen zulässige Ausdruck für “politische Einheit”, besser gesagt: für die Gesamtheit der Angehörigen des Staats.”<sup>16</sup> (In this respect, *people* is today primarily a specific term that can be accepted under any circumstances to denote “political union”, in other words: all citizens.)

The term *nation* was reduced to common origin (cf. the Latin word *nasci*) and the consequent ethnic and cultural relations, in view of historical development.

As opposed to other terminological issues, the difference between *nation* and *nationality* was defined in a way as to meet scientific criteria. “Nation und

14 Gustav Rümlein, Reden und Aufsätze Bd. I. (Freiburg und Tübingen), 108 f.

15 Heintritt, Nationalität und Recht, 16 f.

16 Neumann, Volk und Nation, 32 f.



Nationalität bezeichnen eine Gruppe von Menschen, welche unter sich eine gewisse Gemeinsamkeit haben und eben durch diese Gemeinsamkeit, die wir gleichfalls “Nationalität” nennen, von anderen Menschengruppen sich unterscheiden.”<sup>17</sup> (*Nation* and *nationality* denote a group of people who have a set of common features and differ from other people precisely for these common features, which we call “nationality”).

Therefore, *nationality* has two meanings.<sup>18</sup> Firstly, it refers to a specific group of population as a rival term of *nation* and *tribe*. Secondly, it designates the collective status of a group or, as proposed by Herrnritt, “abstracte Eigenschaft des Volksstammes” (a tribe’s abstract characteristic).<sup>19</sup>

Neumann’s definition seeks to describe the features of “Volksstamm” (tribe) as used in jurisdiction and public administration but primarily in Article 19 of the Fundamental Law of 21 December 1867: “... eine kleinere Bevölkerungsgruppe, die infolge der Gemeinsamkeit äusserer Lebensbedingungen und eigenartiger Kulturanfänge ein eigenartiges gemeinsames Wesen gewonnen hat, das sich von Generation zu Generation überträgt und sich vorzugsweise in gemeinsamer Mundart, gemeinsamen Charakterzügen, gemeinsamen Sitten und Gebräuchen und in dem Gefühl der Zusammengehörigkeit zu äussern pflegt.”<sup>20</sup> (... a minor group of the population having a peculiar common essence due to the coincidence of its external living conditions and unique cultural background, passed down from generation to generation, and is most manifest in a common spoken dialect, features, habits and traditions, and the feeling of shared identity.)

Neumann is talking about the features that determine a tribe’s existence by listing even the subjective and objective elements of the definition of *nation* and *nationality* in the very first meaning of *tribe*. In this way, he highlighted the essence of statements that are relevant for nationality statistics. However, the term *nation* was defined, the main issue was to interpret the criterion that the existing forms of organisation allowed for. In other words, the refusal to identify *nation* with *citizenship* gave rise to the problem that must underlie all further final conclusions in writings about research into language use beyond the river Leitha: Which features determine a nationality?

The criteria of nationality not only underlay nationality statistics but were also vital for theoretical proposals. As these issues are detailed in the chapter on the historical development of nationality statistics, here we only take a cursory look at the criteria of nationality.

The possible criteria included common origin, race, residence, historical and cultural background, religion, and language. Meanwhile, language did not enjoy the supremacy at all that was accorded to it in 19<sup>th</sup> century ideology without making a clear distinction between *language* and *nation*. The two terms often overlapped

17 Uo., 8 f.

18 Gerald Stourzh, Die Gleichberechtigung der Nationalitäten und die österreichische Dezember-Verfassung von 1867. Sonderabdruck aus: Der österreichisch-ungarische Ausgleich von 1867, (Wien/München 1967), 191 f.

19 Heintritt, Nationalität und Recht, 17 f.

20 Neumann, Volk und Nation, 48 f.



because the national self-evaluation of individual tribes was primarily based on language. Scholars had the opinion that language was the primary form of expression of national consciousness although the smallest and linguistically isolated groups sometimes had to adopt this theory of legitimacy to achieve national group egoism in addition to linguistic autonomy despite their low level of education and culture. Scholars overestimated the values of common language in that they misjudged, under the influence of nationalist trends, the link between the “Spracheuphorie” (language euphoria) of the period and the really complex components of nationality.<sup>21</sup>

“Die Gemeinschaft der Sprache ist also, wie die gewöhnliche Meinung mit Recht annimmt, das zuverlässigste Merkmal nationaler Gemeinschaft.” (Thus, a language community is, as rightly supposed by the public opinion, the most reliable criterion of national community.)

Both scholars and the “gewöhnliche Meinung” (public opinion) accepted what they had experienced in reality and converted the language nation, which had to achieve a specific goal in the situation of national groups of different levels of development and in the ideologies of Austria’s individual nationalisms, into a principle that reduced the conflict between nationalities to a matter of language even though national movements used language quite consciously to enforce their national interests.

As the latter conflicts become visible through different languages, they are embodied in the struggle for language, i.e. its use in public life and its equal rights. However, this form is not the essence of the struggle. The essence cannot be other than the essence of all social struggles, i.e. the struggle for power.

Gumplowicz’s opinion is clearly marked by socio-Darwinist features and is thereby the same as the national ideas of the majority of the contemporaries quoted above.

Also, language was clearly overemphasised in the decision of the International Statistics Congress to introduce “Nationalitätenstatistik” (nationality statistics) and hence in the incorporation of a box for languages in the census forms. According to the official statements, the nationalities of Austria did not form part of the language census after 1880. Indeed, there were national conflicts as some part of the population believed that the financial status of certain nationalities mattered more than the category of their language. This generated an incongruence as census takers and some respondents tried to state language as a means of communication in the census while others, motivated by the teachings of socio-Darwinism, considered the principle of language as essentially the expression of the struggle for national supremacy and wanted to make this a norm in censuses.

Coming back to the criteria of nationalities, which are relevant not for nationality statistics but primarily for nationality rights, we have to point out a trend that gave rise to another shift of focus in the definition of *nationality* around the collapse of the Empire, specifically the popularisation of national ideas and hence the increasing

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<sup>21</sup> Wenzel Frind, *Das sprachliche und sprachlich-nationale Recht in polygoten Staaten und Ländern*, 96 f.



intensity of the feeling of oneness. In addition to the already defined “objective” features, under the influence of the national development of certain tribes, the term *nationality* increasingly came to include “subjective” features, such as the typical national consciousness, the feeling of oneness, and the individual’s national allegiance based on their free determination.<sup>22</sup>

This overview of theories about the definition of *nationality* has revealed the following basic attitudes. The two extremes in the interpretation of nationality, i.e. the one-sidedly subjective or objective approach, do not exclude each other a priori but an attempt was made at the general perception of both methods.<sup>23</sup>

Basically, there was always an interplay of several factors but no theoretical consensus was reached as to the composition and number of the required factors. As suggested by Renner, Herrnritt and Bernatzik, the scholars who dealt the most with the theoretical foundations of the issue of nation, in the last decades of the Empire, in scholarly theory, the so-called “Bekenntnisprinzip” (allegiance based on individual declaration) was increasingly significant but this did not change nationality survey methods.

In summary of all scholarly opinions expressed in response to the terminological problems about nationality until the collapse of the Empire, also in consideration of the wide array of proposed solutions, it is fair to say that *nation*, just like *nationality* and *tribe*, treated as synonyms, was defined as a social group by scholars in the period, a group that had emerged under the influence of different objective and subjective features with different effects, and that represented an attempt at absolute political power against the other principles of human coexistence.

Nationality as a social and political basic principle appeared in Europe already in the early 19<sup>th</sup> century. At the same time, it became clear that a period determined by legal uncertainty must elapse between the emergence and the actual relevance of a phenomenon and between its legal appearance.

Such time difference between appearance in practice and statutory regulation was typical of nationalities in the life of the Austro-Hungarian Empire up until the Constitution of December 1867 in the areas west of the Leitha. While *nationality* as a political term existed already in the first half of the century, the Austrian legislators did not know the exact definition of *nationality* until the end of the Empire and used the term *tribe* in its place.

The process of laying down the basic principle of nation in the laws, which essentially differed from the mere recognition of national terms, already started in the drafts of the 1849 Kremsier Constitution and went on until the registration of national elections based on the principle of personality in Moravia (1905) and Bukovina (1910).<sup>24</sup>

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22 This makes the literature include the “subjective” elements in the term *Bekenntnisprinzip*.

23 Vö. Wolfgang Steinacker, *Der Begriff der Volkszugehörigkeit und die Praxis der Volkszugehörigkeitsbestimmung im altösterreichischen Nationalitätenrecht* (=Schriften des Instituts für Sozialforschung in den Alpenländern an der Universität Innsbruck IX. Folge, Innsbruck 1932).

24 Edmund Bernatzik, *Das österreichische Nationalitätenrecht* (Wien 1917), 890 f.





What was the intention of legislators in defining *tribe* and *nationality*, the latter in the sense of a social group's characteristic, also for the group itself, and why did they institutionalise it later?

The idea of a nation's proportionate representation, which greatly exceeded the purely linguistic demands of the individual nationalities (the use of official and school language), despite the predictable consequence of the protracted nationality debates, became a demand of national representations.<sup>25</sup>

The individual not only demanded increasing recognition of their own language in the educational system and official matters but also had to confront with the representatives of their own nationality. The intended institutionalisation of national relations took shape as a right as early as 1873 in the linguistically diverse areas of Bohemia, initially only at a school level, provincial legislation, and in the establishment of the national "sections" of certain school boards.

The principle of "national autonomy" was surpassed by the previous principle of "command of language" to such extent that nationality law entered into a new stage of development where individual national autonomy became a necessary basic principle of political organisations. As has been mentioned, the first such law was the "Schulaufsichtgesetz für Böhmen" (School Supervision Act for Bohemia) dated 24 February 1873 (LGBI. 17), which ordered the appointment of a local school board for both the German and the Czech nationalities in places where schools existed for both nationalities unless the principle of territoriality, i.e. local demarcation applied. The village or city representatives were allowed or "required" to elect the local representatives for both school boards, "Wie auch der Ortsschulinspektor den Angehörigen jener Nationaität entnommen werden, für welche die Schule, die der Ortsschulrat vertritt, bestimmt ist." (As the school inspector must also be of the same nationality for which the school was designated and which is represented by the local school board).<sup>26</sup>

In the decades after the first such law was passed, the areas of Bohemia and Moravia which, as a result of the polarisation of national forces, were engaged in the most fierce debate over nationalities increasingly used the opportunity to establish "national sections" in the areas of school, agriculture, and medical chambers during legislative or other official regulations.<sup>27</sup>

Eventually, Silesia established a National Cultural Council with three national sections in 1910. Tirol enjoyed a privileged situation as in 1881 it introduced the principle of differentiated sections in agriculture following the national criterion but implemented the separation of the German and Italian sections, based on the natural geographic separation of the two nationalities, by means of a geographic adscription.<sup>28</sup>

Bohemia, Moravia, and Silesia found the exact geographic demarcation of the national zones problematic as the only possible basis for the above laws was

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25 Ebenda.

26 Zitiert in: Bernatzik, Das österreichische Nationalitätenrecht, 990 f.

27 Bernatzik, Nationalitätenrecht, 989-1007 ff.

28 Storzh, Probleme der Nationalitätenrechts, 143 f.



the individual perspective of affiliation to a nationality. Thus, national affiliation determined the state's legal relations and the Supreme Court expressed this in its decisions. Logically, this meant that „the geographic principle thus far valid in public law partially replaced the personal principle”.<sup>29</sup>

This principle could only be enforced by the individual survey of the population's national affiliation. Added to this was the basic dilemma of the legal aspect of the nationality conflict and thereby the problem of personal presence in bodies of nationality representatives.

The laws based on the principle of nationality gave rise to rules that lacked the legal basis required for their enforcement. This fact, untenable for legislation and public administration, was the primary argument for the opponents of the language use survey conducted during the censuses for replacing the term *spoken language* in everyday communication with directly inquiring about nationality. Most nationalities actually rejected the possibility of assimilation in the language they used, which was apparently incompatible with the national aspiration of the groups concerned.

After 1880 at the provincial assemblies and in the central parliament, the Government was regularly proposed, especially by the Czech part, ways to survey the language use of nationalities, which the authorities did not recognise as the statistical survey of nationalities if the affiliation to the given nationality in the heterogeneous Austria and Hungary referred to the entire state organisation. The government was aware of that dilemma and, in deviation from the principle of counting, preferred to move towards a subjective nationality survey, as shown by the 1900 and 1910 censuses.

The nationalities that did not profit from the language use surveys due to their economic or social situation felt concerned that the government would ultimately consider the results of such surveys as a basic principle in regulating the issues of nationality.

Despite the function of the language use surveys as a “national indicator” challenged by the government, Heinrich Mayrhofer von Grünbühel, who moderately supported the government's census policy and whose writing “Die Volkszählung in Österreich” was used by the Graz Governorship as an instruction material for preparing the census committees for the 1900 census, wrote the following:

“... Die Sprachenerhebung der Volkszählungen wird in der Praxis des gesammten öffentlichen Lebens immer und überall als der Schlüssel für die Entzifferung der Gruppierung der Nationalitäten angesehen. (...the language use survey of censuses was considered always and everywhere as the key to solve the grouping of nationalities in official affairs.)<sup>30</sup>

The government's theoretical idea that the results of the language surveys did not reflect exact nationality data but allowed for conclusions as to national relations became embodied in the concern of the Slavic national groups as they were afraid that the survey results would reflect in the texts of nationality bills, relevant for the nationality conflict.

<sup>29</sup> Edmund Bernatzik, *Über nationale Matriken* (Wien 1910), 17 f.

<sup>30</sup> Maxerhofer von Grünbühel, *Die Volkszählung in Österreich* (Graz 1900), 188 f.



The ministerial decree issued on 24 February 1898 during the term of Prime Minister Gautsch, which referred to the official use of languages in the Kingdom of Bohemia, supports that the concerns were well-grounded in that the figures of the censuses were used for creating regulations on languages and nationalities. The language decree regulated the criterion of a mixed district in Section 7, which only recognised the language minority's rights if, according to the results of the latest census, at least one-fourth of the locality's participating population had chosen the other language used inside the country. The use of the two nationwide languages in public administration was based on the designation of the linguistically mixed districts.

In addition, on the one hand, the principle that made minority rights dependent on the minimum percentage came to the foreground, as this was subject to a debate in all drafts about the regulation of language use in the autonomous offices. On the other hand, it was recognised that the common language used by the participating population was important and affected the language used in the given public agency.<sup>31</sup>

However, it was not legally laid down that the census figures were the only evidence of the population's distribution in percentages.<sup>32</sup>

In 1910 Wladimir von Pražák tried to solve the contradiction between the necessary determination of the exact nationality figures and the refusal of the unreal language use surveys for various reasons by replacing the language use survey with the direct survey of the mother tongue of the nationality or something close to it. The same attempt was made by many Members of Parliament in their interpellations and filings since the introduction of the language use survey. Pražák, who attended the meetings of the Central Statistical Committee in 1910 as the representative of the Ministry of Agriculture and contributed to the preparation of the census of 31 December 1910, was the only participant to claim that the surveys should not cover the inquiry about everyday language use. He did so with reference to the national laws made for Bohemia and Moravia, following the principle of national autonomy, that do not rely on the language spoken in everyday life but demanded the individual survey of nationalities according to the valid legal interpretation of nationalities.

As no law laid down the term of *nationality*, the representatives of the given nationalities were able to adapt a certain criterion to the individual situations when specifying the term *nationality* to be defined as a non-absolute statistical magnitude.

Eventually, this conclusion only applies to the necessary criteria of nationality but does not at all affect another key question if the nationality must be registered within the census.

The practices of Austrian courts do not include any single case where the Supreme and Administrative Courts or the Constitutional Court decided on affiliation to the given nationality based on a declaration made in the language use survey. Despite the declaration of using the given language, it was impossible to identify nationality in the individual decisions. In the case of a clear statutory background it is impossible

31 Wenzel Frind, *Das sprachliche und sprachlich-nationale Recht* (Wien 1899), 302 f.

32 Bernatzik, *Über nationale Matriken*, 13 f.



that the legislative bodies west of the Leitha ever considered the factor of language use, *de jure*, as a criterion which constituted the very nationality.

Mention must be made of the political value of language use surveys whereas spoken language was in this case, quite correctly, *de facto* identified with the concept of nationality.

Article 19 of Fundamental Law No. 142 of 21 December 1867, the significance of which cannot be overestimated in the problem of early Austrian nationality, was the potential basis, together with Section 1 on the equal rights of all tribes, for the demand for the establishment of national relations. Yet, the detractors of language use surveys argued against the direct application of or need for the provisions aimed at Article 19 and its implementation. The explanations provided in this respect had the starting point, on the one hand, that the entire Article 19 was enshrined in a law that spells out the general rights of citizens while the article establishes the tribe's right (i.e. a collective right) as it was worded<sup>33</sup>, on the other hand the fact that the problem of collective versus individual rights was decided by court practices and the related question whether it was about a promising law or only a directly applicable right. The consequent legal uncertainty frustrated the demand for the right to assume nationality as a corollary of Article 19 of Fundamental Law No. 142. Thus, in this field, the arguments against the use of a common language were limited to their alleged administrative effects, which were not in harmony with the text of the census prescriptions and Austria's nationality law at that time.

As neither the Austrian courts nor parliament regulated national law only based on census results in any single case, the frequent argument about the misinterpretation of statistical data came to have an instrumental character. Schematically, language use statistics was replaced by an inquiry into national allegiance as one of the methods of self-justification:

“Österreich wird von zahlreichen Nationalitäten bewohnt und daher sind die Erhebungen über die Nationalität von größerer Wichtigkeit für die staatlichen Funktionen sowie auch für das Zusammenleben der Nationen. In den bisherigen Volkszählungen sind jedoch nur die Rubriken der „Umgangssprache“, nicht aber die der Nationalität angegeben, was zur Folge hat, daß die Wissenschaft darunter leidet und der politische Organismus mangelhaft und ungenau funktioniert.” (Austria is inhabited by a number of nationalities so the surveys about nationalities have the greatest relevance for the state's operation and the coexistence of nations. At the same time, the censuses so far have only included the box for “language used in everyday life” but not one for nationality, with the consequence that science is frustrated and the political regime works deficiently and inaccurately.)<sup>34</sup>

Such deficient and inaccurate operation of the political regime was based on the fact in the issue of nationalities that Austrian law did not know the individual term of *nationality*<sup>35</sup> so in all decisions of the supreme public agencies where the precondition

33 Karl Gottfried Hugelmann, *Das Nationalitätenrecht nach der Verfassung von 1867* (Wien/Leipzig 1934), 89 f.

34 Uo., 93 f.

35 Vö. Bernetzik, *Das österreichische Nationalitätenrecht*, 989 f.



was the individual assumption of national separation or national allegiance, the court had to establish the factors that determined nationality. Disregarding the fact that as long as the matter of national affiliation was not legally regulated as a special target, excluding individual cases, the proclamation of national rights in any form, primarily in German speaking areas, led to the escalation of the national conflict<sup>36</sup>, legislation had the duty, which the supreme public agencies were required to perform. This means that courts as supreme legal authorities in theoretical terms exceeded their power in the rule of law.

Bernatzik strongly criticised the definition of nationality that exceeded court competence and was at times different and argued against courts' power to define the criteria of nationality.

The reason for this legally difficult situation is that data about the languages spoken in everyday life, a survey incorporated into the censuses since 1880, were not considered as nationality statistics. The deficient methods of the survey of languages spoken in everyday life and the fact that census results did not provide a "clear" picture, either *de iure* or *de facto*, of the national affiliations of the individual citizens led to attempts to provide a more solid basis for national affiliation.<sup>37</sup>

The Administrative Court, established in 1876, and the Supreme Court, established in 1869 in the Austrian part of the Empire as a guarantee for constitutional rights, in complete opposition to the situation of Hungary, a multinational nation state<sup>38</sup>, continuously confronted with issues of nationality and the Supreme Court asked the Central Statistical Committee for statistical data as grounds for a judgement already in 1879 to tackle such issues. At its session on 18 October 1879, in response to the Supreme Court's request for data related to the national division of the population of Lemberg, the agency made the point that the Central Statistical Committee did not have data on the national division of the population as no nationality censuses had taken place in Austria. The Central Committee emphasised the importance of surveying "Familiensprache" (the language used in family), as also proposed by Adolph Ficker, the period's leading statistician. After the Austrian government decided in March 1880, for reasons that are examined elsewhere, to not inquire about nationality in the censuses but about the languages spoken in the families, this did not mean a criterion of national affiliation either for the Supreme Court or for the Administrative Court.

The theoretically objective question of statistics became a means of the national struggle in that the answer to the question confronted people with its political significance;<sup>39</sup> so it remained the duty of law to achieve a legal interpretation of nationalities irrespectively of census results, which could not provide a basis for the population's national division and personal affiliations as the products of the national struggle and as the expression of the national force of the individual nationalities.

Essentially the same methodological question arises for both nationality law and statistics. Neither the legal practices of supreme authorities nor statistics could

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36 Herrnritt, *Nationalität und Recht*, 82 f.

37 Wolfgang, Steinacker, *Volkszugehörigkeit im Nationalitätenrecht* (Innsbruck 1932), 62 f.

38 Stourzh, *Probleme des Nationalitätenrechts*, 133 ff.

39 Bernatzik, *Über nationale Matriken*, 10 f.



reach a constant “modus vivendi” that can be followed in every case. Theoretically, both subjective and objective elements were used to determine nationalities. Once a set of criteria were identified for examining the individual’s nationality (by lack of statutory provisions), it remained the duty of legislators, as proposed by Steinacker, to choose between “Wesensmerkmale” (objective criteria) and “Willensmerkmale” (subjective criteria).<sup>40</sup> The legal practices of courts were hovering between the two extremes. The principle of national self-declaration, focussed on the individual’s decision, was applied the same way as the option to make the objectivation of actions (“Objektivierungen der Handlungen”) which give shape to the national sense, a criterion of national differentiation.<sup>41</sup>

In the latter case, where a public agency determined nationality, the census data were also used as an objectivation of the national sense. Curiously, the decisions taken by the supreme authorities and the trends underlying the definition of language spoken in everyday life moved towards the opposite direction in the last decades of the Empire.

Let us take a look at the relation between language and nationality from the perspective of positive law. As reflected by the decisions of the supreme authorities, language, whichever its form, was never considered the same as nationality. At the same time, language was one of the criteria of enforcing national rights based on “Landesüblichkeit” (any element used and usual in, and typical of, the given country or province, such as the language spoken by the nationalities living in the given province).<sup>42</sup>

After 1867, the postulate of national equal rights affected two distinct areas: the field of language rights on the one hand and the right to national affiliation and national autonomy.<sup>43</sup>

The matter of equal rights for tribes was settled by legal means in Bohemia and Bukovina only at the beginning of the century based on the principle of national autonomy whereas the typical discrepancy of legal practices in the other crown provinces between the necessary “Landesüblichkeit” of the language and the determination of national affiliation meant that the issue of nationalities formally remained nothing but the issue of language.<sup>44</sup>

The enforcement of national rights in language was based on the determination whether a language was “landesüblich” (characteristic of or usual in the given country or province). This primarily relied on the data of language use surveys but certainly not in the consistent practice of the supreme authorities. In its order dated 12 July 1880, the Supreme Court<sup>45</sup> argued that a language may be declared “landesüblich”,

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40 Steinacker, *Volkszugehörigkeit im Nationalitätenrecht*, 40 f.

41 Vö. Gerald Stourzh, *Die Gleichberechtigung der Volksstämme als Verfassungsgarantie*. Erscheint in: *Die Habsburgmonarchie 1848–1918*. Hgg. Von Adam Wandruszka und Peter Urbanitsch Bd. 3 (Wien 1979).

42 Bernatzik, *Das österreichische Nationalitätenrecht*, 978 f.

43 Uo., 981 f.

44 Bernatzik, *Das österreichische Nationalitätenrecht*, 978 f.

45 Uo., 981 f.



i.e. spoken and otherwise used in the given country or province, if it is spoken by a high number of local people “in everyday communication” (even if only in certain regions or places of the country, i.e. if it is definitely used in the given country or province).

The term “landesüblich” required a certain degree of stability in language use whereas this was also determined using different census results for a comparison. The linguistic and nationality problems of Austria’s public administration in the period concerned the “external” and “internal” official language and the language training of government officials. The interests of certain social groups were confronted in military language use and education, and in the central issue of the language of education.

The registration of the language used for everyday communication also played a role in choosing a language for drafting official statements in certain locations. In its decision dated 10 June 1905, the Administrative Court held that official statements must be written in the country’s autochthonous language “that people in the place (chosen for the event of election) feel their own”.<sup>46</sup>

Language use surveys also played a key role in making decisions on linguistic matters of traffic regulations. The lack of individual laws in railway and post administration that regulated multilingualism meant that the term *Landesüblichkeit* and together with it census results were used.<sup>47</sup> In post administration, the agencies relied on the results of the latest language use surveys concerning matters of official language. Also, these data were used by the Central Statistical Office in the language formulation of its publication *Allgemeine Ortschaftsverzeichnisse vom Jahre 1900* (General Place Register of the 1900s).

Official language and the language of school education meant the two collision points of the linguistic-national conflict where people demanded the settlement of language relations. In 1880 the survey of language used in public life was introduced to answer the question of nationalities’ distribution by number but not individual national affiliations and also to make the census data as a basis for regulating school and official language.

In mapping the percentage of nationalities, the language use results of the census were applied in several decrees on official language in certain crown provinces as the only way to support the linguistic distribution of the population. This should be laid down in a law according to the bill submitted by Koerbbers in May 1900 to the Czech Language Act.<sup>48</sup>

The re-regulation of the division of Bohemia into districts was one of the most important matters also in 1910, in the debate on censuses that was about the nationality factor. The Czech side used the data of Bohemia’s 1910 language use survey to legitimise the fundamental refusal to the national definition of districts.

As neither the government nor the representatives of nationalities gave up their positions, altogether there was no consensus either in the use of census figures or in the matter pertaining to school and official language.

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<sup>46</sup> 1905. 06. 10-i VGH-végzés Budw. 3630/A.

<sup>47</sup> Vö. § 20 des Organisationsstatutes für die staatliche Eisenbahnverwaltung vom 19. 01. 1896, RGBI. Nr. 16.

<sup>48</sup> Bernatzik, Über nationale Matriken, 13 f.



Yet, when summary census statistics were used, in diametric opposition to the legal basis accepted for the individual establishment of nationality, the language spoken in everyday life was used to draw a conclusion as to nationality. In a few cases also minorities of a limited number were taken into consideration. At the same time, the court recognised few language minorities in the compromise solution between the Czech proposal of bilingual equal rights and the German proposal of monolingual equal rights and considered the language spoken by minorities as used in the province (*landesüblich*) in the referendum.<sup>49</sup>

Summarising all aspects of the principle of spoken language and the principle of national affiliation, the link between language and nationality not to be determined meant that, as expressed figuratively by Renner, language eventually served as a “Gesslerhut” (Gessler hat),<sup>50</sup> which was also affected by the significance of international conflicts.

“Der Kampf um die Sprache erhitzt die Gemüter vor allem deshalb, weil hinter dem meist formalen Streit um das gesprochene und geschriebene Wort sich der Kampf der Nation um die Macht im Staate oder über den Staat verbirgt.” (The struggle for language has stirred up such a controversy mainly because underlying the debate, mostly formal, about written or spoken language is the struggle of nations for power in or over the state.)<sup>51</sup>

Such struggle for power, which took shape in the principle of nationality, can explain the discrepancy that arose during the debate over nationality and language. The only way to obtain language and national rights was for the language to be “landesüblich”, i.e. used in the given province, or for the individual to be a member of the given tribe, whether or not it lived in the area, or for the given tribe to inhabit the area, irrespectively of the person’s national affiliation.<sup>52</sup> Yet, the recognition of such rights by the supreme authorities not only depended on the language factor by lack of the relevant law. The individual could demand language rights on the grounds of nationality but language was not recognised as a decisive component of the definition of nationality.

49 Vö. VGH-Erkenntnis vom 1905. 03. 11. Budw. Nr. 3372/A; VGH-Erkenntnis vom 1909. 12. 16. Budw. Nr. 7081/A. und VGH-Erkenntnis vom 1914. 12. 09. Budw. Nr. 10624/A.

50 Renner, *Das Selbstbestimmungsrecht der Nationen*, 63 f.

51 Uo., 65 f.

52 Vö. Hernritt, *Die Ausgestaltung des österreichischen Nationalitätenrechts*, 588 f.