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Minority Protection and Kin-State Engagement: *Karta Polaka* in Comparative Perspective

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ABSTRACT In this article, we propose a new normative approach that recognises and responds more adequately to the quadratic political reality of kin-state – kin minorities relations. Our point of departure is the dual contention that home-states have the primary duty to achieve full and effective equality between their citizens, while accommodating fairly their internal cultural and linguistic diversity; and that kin-states have a legitimate interest in their co-ethnics abroad. Building on this foundation, we argue that kin-state engagement should complement home-states’ domestic commitments to cultural justice, in order to foster more effective minority protection. We conclude by outlining a concept of shared responsibility for minority protection between kin-state and home-states.

Introduction

While ties between kin-states and their co-ethnics abroad must today be acknowledged as a political reality, the recent intensification of kin-state engagement across Central and Eastern Europe (CEE) has hardly been consonant with promoting and protecting at the very least those minority rights guaranteed under international instruments. As outlined elsewhere in this volume, the kin-state engagement of both Hungary and Poland is justified as a remedy to historical injustices against an ethnoculturally-defined nation. However, the evolution of their

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kin-state policies towards facilitating access to citizenship has in fact shown the increasing prevalence of a neoliberal state rationality regarding their trans-sovereign identity politics (Mavelli, 2018) legitimised by the mainstreaming of ethnopopulism domestically (Jenne, 2018; Stroschein, 2019). Such policies have continued to be a source of tension between the two kin-states and the states in which their co-ethnics reside.

Despite this development, the sole authoritative evaluation to date of the legislation on kin-minorities in Europe remains the one conducted by the Council of Europe's Venice Commission in 2001. This defines a kin-state's role as one of minority protection (Council of Europe [CoE], 2001, Section D), and thus implicitly as a matter of justice. Yet, the European norms and standards of minority protection developed since the start of the 1990s provide little if any concrete guidance as to how and to what extent a kin-state's engagement could actually contribute to protecting non-dominant groups within their home-states, since the latter are still deemed to hold exclusive responsibility in this area. In this respect, we argue, the 'Quadratic Nexus' (Smith, 2002) of relationships that captures the reality of ethno-cultural diversity politics in CEE has not moved beyond the state-centric, securitised and nationalist logic inherent to Brubaker's original 'Triadic Nexus' (1996). Caught between competing state interests are kin-minority groups themselves: primarily focused on preserving their cultural authenticity and attaining equal citizenship for their members within their home states, these communities broadly welcome external kin-state support to promote their language and culture. As we demonstrate here, however, co-ethnics abroad are increasingly conscious of being strategically exploited by kin-states for purposes that are 'indifferent, indeed hostile' (Brubaker 1996, pp. 131-2) to promoting specific minority group interests.

In this article, we propose a new normative approach that recognises and responds more adequately to the abovementioned quadratic political reality and could contribute to fostering more effective minority protection. Developing insights from our research on kin-state engagement and liberal multiculturalism (Udrea, 2011; Udrea, 2014) and minority participation and autonomy (Smith & Hiden, 2012; Smith, 2019) respectively, we advance a case for redefining the protection of kin minorities as a shared responsibility between home-state and kin-state. Our point of departure is the dual contention that: a) home-states have the primary duty to uphold minority protection, namely to achieve full and effective equality between their citizens, while accommodating fairly their internal cultural and linguistic diversity; and b) kin-states have a legitimate interest in their co-ethnics abroad. Building on this foundation, we argue that kin-state engagement - whether in the form of direct assistance or political advocacy on behalf of co-ethnics abroad - should complement home-states' domestic commitments to cultural justice. Consistent with O'Neill's view, cultural justice as a form of constitutional justice refers here to a normative framework that promotes the recognition of particular group identities, acknowledging the relationship between individual freedom, collective self-expression and equal citizenship (2000). The article proceeds as follows: in section 1 we discuss existing conceptions of minority protection in international law, demonstrating that these have centered on individual rather than collective rights and strengthened the exclusive responsibility of home-states rather than encouraging shared responsibility. This fact - we then argue in section 2 - has rendered the international norms and standards of minority protection unable to accommodate the growing trend towards kin-state engagement in CEE. In section 3, we then discuss the examples of Hungary and Poland, using new empirical data to shed light on the often-neglected perspective of kin-minorities themselves.¹ We then proceed in section 4 to outline a concept of shared responsibility for minority protection between kin-state and home-states.

The International Protection of Minority Ethno-Cultural Groups

The need for and extent of the protection of minority ethnocultural groups in Europe have always been thorny issues, since they continuously challenge forms of sovereignty that promote congruence between citizenship, common cultural belonging, rights and territory. The international norms and standards of minority protection adopted in the last two decades have contributed to a modest diffusion of liberal multiculturalism and strengthened home-states' primary responsibility for minority protection. However, the ongoing crisis of solidarity in Europe evident since the 2008 financial crisis has been steadily eroding the already fragile European inter-state co-operation regarding the protection of individual and group rights (Owen, 2018). Various statements at an event to mark the 10th Anniversary of the Bolzano/Bozen Recommendations on National Minorities in Inter-state Relations (2018) stressed that the most visible impact of the crisis has been the erosion of multilateralism and the weakening of reciprocity as the regulatory mechanism on which the European minority protection regime has been constructed after 1989. Overall, then, the protection of minorities has diminished, with recent political developments turning its effectiveness into a major point of contention between minority ethnocultural groups and home-states (Marko, 2018). In this context, the continuing expansion, diversification and institutionalisation of kin-state support has appeared to offer an alternative form of minority protection that is generally welcomed by kin-minority groups. As a first step towards understanding how this kin-state engagement might be conceived in terms of shared responsibility with a minority's home-state, this section examines current international norms and standards of minority protection and the implications they hold for the allocation and nature of responsibility in this area.

Minority protection in Europe has evolved from an approach defined by ‘minority guarantees’ following the post- First World War territorial settlements, to one centred on promoting individual rights after the Second World War. ‘Minority guarantees’ in the inter-war period referred to obligations to accommodate minority ethnocultural groups assumed by states voluntarily or under the pressure of other states, generally kin-states which exercised their power directly or indirectly. *De facto* the main object of these arrangements was to secure inter-state peace and the territorial borders drawn by the post-war settlements (Jackson Preece, 2005, pp. 1-17). Voluntary in nature and easy to rescind, they contributed very little to sheltering minority ethnocultural groups from the discriminatory and assimilationist effects of their home-states’ policies (Jackson Preece, 1998, pp. 67-94; Smith and Hiden, 2012, 1-8).

The significant shift towards a novel conception of minority protection took place after the Second World War. While minority issues were relegated entirely to home-states, becoming a matter of domestic determination, the international institutions focused on developing universal norms and procedures to guarantee the rights enshrined in the Universal Declaration of Human Rights (1946). The common view has become that minority protection was ensured when states refrained from discrimination and from curtailing individual liberties (McGarry and O’Leary, 2013). A basic minority-related Article was only introduced in the UN International Covenant on Civil and Political Rights, stating that ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’ (UN General Assembly, 1966, Art 27). Experience had shown that the principle of non-discrimination is but a minimal requirement, and in fact, if minority rights are to protect a group’s ethnocultural identity, ensure its integration and help achieve substantive equality, ‘minority

protection requires affirmative action to the extent that may not be covered by a non-discrimination provision' (Bloed and van Dijk, 1999, p. 3).

The escalation of ethnic tensions in CEE during the 1990s led to a concerted effort by international organisations to define explicit standards of minority protection and enforce home-states' duties vis-à-vis their minority ethnocultural groups. As early as 1992, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities advanced a set of rights that persons belonging to minority groups should enjoy and affirmed that home-states have a responsibility to fulfil them (UN General Assembly, 1992). Such rights include not only the protection of a group's existence and identity (Art 1), but also the promotion of their specific identity, participation in cultural, social, economic and public life, cultural autonomy and cross-border cooperation (Art 2) and they entail corresponding obligations on the part of the home-states (Art. 3-8).

In Europe, the UN Declaration was followed by the adoption of various instruments defining the standards of minority protection. The Framework Convention for the Protection of National Minorities (CoE, 1995)² asserts that the protection of national minorities is inseparable from that of human rights and as such makes it the object of international cooperation (Art 1). Furthermore, it assigns home-states the primary responsibility to promote full and effective equality between people belonging to minority groups and those belonging to the majority (Art 4) and asserts that states have a responsibility to promote the participation of the members of minority groups in public affairs, as well as that in the social, cultural and economic life (Art 15). An important step towards making non-discrimination effective was the EU Racial Equality Directive (Council of the European Union, 2000). This puts forth a European principle of equal treatment irrespective of ethnic and racial origin

which applies to all EU citizens regardless of their residence and citizenship. Most importantly, minority protection has become one of the fundamental values of the European Union following the consolidation of the Article 2 of the Treaty of Lisbon (EU, 2012).

The consistent engagement of international intergovernmental organisations in CEE since the start of the 1990s has made them key actors in the domestic and international politics of the region, ensuring that minority claims have become enmeshed in a *quadratic* rather than simply triadic nexus (Smith, 2002). These organisations have not only played an important role in persuading states to better accommodate their ethnocultural minority groups, but have also assisted and monitored such changes. As such, there was extensive discussion during the late 1990s and early 2000s as to whether this engagement would serve to moderate and transcend competing forms of nationalism in the region (Kymlicka & Opalski, 2001; Budryte, 2005; Jackson Preece, 2005). European minority rights standards were adopted in the 2000s by many countries eyeing a smooth accession to EU membership. This was hailed as a clear sign of democratisation and an indication of the successful, if modest, diffusion of liberal multiculturalism in the post-communist states (Kymlicka, 2007, pp. 3-25).

Nonetheless, the potential to promote new forms of sovereignty-sharing on the one hand, and to ensure a comprehensive protection of minorities on the other (Carrera, Vosyliūtė, Guild & Bard, 2017) has been challenged by the absence of a normative framework, as well as by political developments preceding the Covid crisis. Bellamy and Kröger persuasively argue that the European Union has met the minimal conditions for discussing international cooperation as a matter of social and political justice (2019)³. However, many forms of cross-border and inter-state cooperation, as well as the expansion of the EU citizenship regime, have been frustrated in recent years by the decreasing porosity of borders in the aftermath of

the European financial crisis in 2008, compounded by the rise of virulent nationalism. Moreover, despite the EU's commitment to a principle of equality understood as equal opportunity to pursue one's life choices in a way that is consistent with one's cultural norms, the accommodation of cultural and linguistic diversity continues to be the exclusive duty of home-states. In effect, many scholars note that European integration has had only a minimal impact on the allocation and scope of a responsibility to protect ethnocultural minority groups. While it has facilitated inter-state cooperation, in reality it has only contributed to promoting an integrationist form of minority protection, albeit rooted in human rights and consistent with the liberal defence of individual freedom (Mabry, 2013), and to encouraging novel forms of cross-border cooperation (McGarry and O'Leary, 2013).

Defining the Limits of Kin-state Engagement

Measured in terms of its scope and institutional extent, the minority protection regime in post-Cold War Europe has arguably been a success. As already noted, however, in recent years it has been challenged by resurgent nationalism, leading to a multiplication of cases on all four areas of concern identified by the UNHR Office of the High Commissioner for minority groups (n.d.): a) protecting a group's existence and survival (*e.g.*, Aromanians in Romania); b) protecting and promoting the social and cultural identity of minority groups (*e.g.*, ethnic Russians in Latvia); c) ensuring effective non-discrimination and equality (*e.g.*, Roma in Romania and Hungary); and d) safeguarding the effective participation of minority ethnocultural groups in public life (*e.g.*, ethnic Serbs in Kosovo or ethnic Albanians in Macedonia).

Over the last three decades, the exclusive responsibility of home-states in relation to the protection of their minority groups has also been challenged by the multiplication in form and reach of kin-states' extra-territorial involvement, especially in CEE. Yet, it was only from 2001 that the relationship between kin-states and kin-minorities began to attract significant international attention. The catalyst for this was Hungary's Act LXII on Hungarians Living in the Neighbouring Countries (Hungarian Parliament, 2001). The terms of Act LXII were contested by governments in neighbouring Romania and Slovakia, which portrayed it as an infringement of their bilateral treaties with Hungary (Tomiuc, 2001). Specifically, the Official Position of the Romanian Government on the Act, submitted to the CoE's Venice Commission in 2001, claimed that Hungary's policy breached the principles of non-discrimination and subsidiarity in international law, as well as that of reciprocity enshrined in the bilateral treaties it had signed with the neighbouring countries. Most importantly, the main contention addressed the scope of the policy, which extended beyond the preservation of cultural and linguistic identity. Here, the report of the Romanian Government not only referred to those provisions which encourage labour migration and facilitate access to discounted or free transport, but also questioned the quasi-legal connection that the Certificate of Hungarian Ethnic Origin and Certificate for Dependents of Persons of Hungarian Nationality creates between Hungary and ethnic Hungarians who are both citizens and residents of neighbouring states (Romanian Government, 2001).

It was at the request of the Romanian Prime Minister Adrian Năstase and the Hungarian Minister of Foreign Affairs János Martonyi that the CoE's Venice Commission carried out its 2001 comparative evaluation of legislation and practices regarding states' preferential treatment towards their kin-minority groups (CoE, 2001). The report concludes that 'the emerging of new and original forms of minority protection, particularly by the kin-States,

constitutes a positive trend insofar as they can contribute to the realisation of this goal' (Council of Europe [CoE], 2001, Section D). Rather than devising new standards and innovative mechanisms in this area, however, the report strengthened the principle of non-intervention in international relations, enforcing the relationship between citizenship, territory and rights. In this regard, a kin-state's engagement with its co-ethnics abroad has generally been accepted as legitimate in so far as: (a) it does not generate inter-state conflict; and (b) does not challenge the primary responsibility home-states bear in relation to their minority ethnocultural groups (Palermo, 2011). However, Palermo pointedly notes that in fact 'the legitimacy of kin-state policies largely depends on the context and on the practical effect in inter-state relations' (*ibid*, pp. 15). Even though the 2001 CoE report states that kin-state engagement should comply with the four principles of international relations - state territorial sovereignty; *pacta sunt servanda*; friendly relations amongst states; and the respect of human rights and fundamental freedoms (CoE, 2001) - it failed to harmonise the freedom to establish, maintain and develop ties within communities residing across different states - as defined in Article 17 of the Framework Convention for the Protection of National Minorities (CoE, 1995) - with the right of states to preserve their sovereignty (Palermo, 2011). Nevertheless, despite its shortcomings, the Report conferred normative significance to Hungary's Act LXII by placing it at the centre of the only comparative evaluation of the legitimacy of kin-state involvement carried out in Europe.

Since that time, other international organisations have become increasingly engaged in issues of minority - kin-state relations, most notably the Office of the OSCE High Commissioner on National Minorities (OSCE HCNM), which in 2008 issued its Bolzano/Bozen Recommendations on National Minorities in Inter-state Relations (OSCE HCNM, 2008). These Recommendations recognise that the well-being of national minority groups abroad

may be an object of legitimate concern on the part of states to which such groups are linked by common ethnic, cultural, religious, or linguistic identity, or common cultural heritage (Rec 4). At the same time, the importance of inter-state cooperation is deemed essential, as these Recommendations are primarily an instrument of conflict prevention geared to preserving good neighbourly relations and peace (OSCE HCNM, 2008, pp. 1-2). However, the Recommendations not only enforce a home-state's exclusive responsibility for the protection of minority groups within their territories, but also attempt to define the limits of a kin-state's engagement: a kin-state's involvement can be limited if it undermines the integration of minority ethnocultural groups in their home-states⁴. In practice, the accommodation of national minority groups in inter-state relations is carried out by encouraging 'best practices' which remain highly contextualised and lack normative power (OSCE HCNM, n.d.).

Kin-states thus continue to operate in a very weak international legal environment, and consequently the capacity of international organisations to regulate a kin-state's engagement remains rather limited (Bloed & van Dijk, 1999; Huber & Mickey, 1999; Kymlicka, 2007, pp. 3-25; Kemp, Popovski & Thakur, 2011; Palermo, 2011; Tesser, 2015). The Bolzano/Bozen Recommendations may have made it at least somewhat 'more difficult for States to exploit and abuse legal and normative uncertainties surrounding the issue of kin-state activism and to justify their actions' (Sabanadze 2009, p. 314). However, in so far as they do not impose legally binding obligations, they remain difficult to enforce if a state does not comply voluntarily. Moreover, while the Bolzano/Bozen Recommendations acknowledge common identity or heritage as minimal grounds for a legitimate interest on the part of an external state, they underestimate how this provides kin-state actors with scope to instrumentalise co-ethnics abroad in pursuit of domestic political legitimacy, a resolution of internal economic problems, or other external state policy objectives. In this respect,

minorities' continued disenchantment with their home-states' policies of accommodation only increases space for manipulation by the kin-state.

Overall, then, the European minority rights regime has had only limited effectiveness when it comes to addressing issues of minority-kin state relations. Having failed to respond adequately and effectively to a new political reality defined by the existence of dual and often overlapping obligations assumed by home- and kin-states, it is now threatened by the increasing re-institutionalisation of virulent monocultural nationalism. Already prior to the 2008 financial crisis, various scholars argued convincingly that a kin-state's nationalism has a much stronger impact on the nature and extent of its engagement with its kin-minorities than do considerations of regional security or international norms (Saideman, 2002; Jenne, 2004; Waterbury, 2008). With the subsequent rise of ethnopopulism as a significant factor, kin-state policies have evolved in ways that further challenge any attempt to justify them as forms of minority protection.

Divergent Understandings of Engagement: Instrumentalisation vs. Kin-Minority

Aspirations

As various examples testify, different forms of kin-state assistance are today instrumentalised for achieving goals which are at odds with the understanding and standards of minority protection.⁵ *Karta Polaka* offers a case in point, as it is geared to strengthening Poland's ties with its co-ethnics abroad, and providing assistance largely within Poland's state borders (Polish Sejm, 2007). *Karta Polaka* has, moreover, been accompanied by legislation facilitating access to citizenship for ethnic Poles abroad, again within the borders of Poland. Increasingly conceived as a way of tackling a growing demographic crisis within the kin-state itself, this policy has encouraged long-term migration of ethnic Poles to Poland, rather than

protecting their minority rights and supporting the promotion of Polish language and culture within their home states.⁶

Similar instrumentalist trends have been evident in Hungary since 2010, not least in the decision to extend full citizenship to Hungarians abroad. While this form of citizenship is extra-territorial rather than linked to residence in Hungary, securing a Hungarian passport has made it easier for ethnic Hungarians from neighbouring states (especially those in Ukraine and Serbia) to depart and seek work in Hungary or another EU state (Tátrai, Erőss & Kovály, 2017). In the Hungarian case, however, instrumentalisation has occurred against the background of a pre-existing system conferring extensive support to Hungarian minorities *in situ*, of which Act LXII of 2001 constitutes the cornerstone. Consequently, the post-2010 shift towards *passportisation* and efforts to recruit Hungarians abroad as a source of labour has led to a struggle within Hungary itself to re-define the aims and direction of its kin-state engagement (Tátrai, Erőss & Kovály, 2017).

The nature and extent of the two states' engagement also impacts on their institutional capacity to assume responsibility for minority protection. In the case of Poland, access to citizenship only offers its bearers, outside the territory of Poland, a right to diplomatic protection, a right to return and voting rights. By contrast, Hungary has developed and implemented long-term programmes to support its co-ethnics abroad in addition to the recently safeguarded rights of external citizenship, such as generous funding of culture and education offered to its co-ethnics abroad in their home countries, as well as economic development schemes targeting ethnic Hungarian entrepreneurs in the neighbouring countries (Kántor, 2014; Kántor, 2019). Its trans-sovereign institutionalisation remains the most complex in Europe.

While Hungarian minority ethnocultural groups have generally welcomed the more active involvement of their kin-state, they have nevertheless continued to direct demands for political and/or social justice primarily towards their home-states. From interviews with Hungarian minority elites in Romania during 2015-16, for instance, it was clear that most respondents saw responsibility for improving the accommodation of ethnocultural minority groups as lying exclusively or at least primarily with the home-state. At the same time, respondents saw cultural support from Hungary as highly beneficial in terms of supporting the well-being of Romania's Hungarian minority and consolidating and sustaining its distinct identity. For many, the award of extra-territorial citizenship by Hungary could be seen – at least potentially –as consistent with this agenda. As one elected Hungarian official in Romania observed:

‘Hungarian citizenship is beneficial for Transylvanian Hungarians only if this is accompanied by programmes supporting remaining in the homeland. If this isn't there, then basically I think it does more harm than good. [...] [T]hat a Hungarian person can't live the same full life as a Romanian person. This is how I approach the question. ... [A] full life includes the ability to use our symbols, and the ability to use my language in administration and governance, and about having the same chance of getting a well-paid job as the other'.⁷

Other recent studies of minority-kin state relations also testify to the complexities of identity and multiple belonging within Central and Eastern Europe, showing that a minority's identification with a culturally defined transnational community should not automatically be taken to imply a threat to the home state (Cheskin, 2015; Kallas 2016; Cheskin & Kachuyevski, 2019; Waterbury and Lodzinski in this volume). Ethnic Hungarian respondents in Romania also pointed out that ties to an external kin state are already an established and non-controversial feature of various minority settings, citing examples ranging from South

Tyrol to Quebec.⁸ Another maintained that dual citizenship does not ‘go against either Romanian laws or EU practice, because there are a lot of states that acknowledge [this] and encourage it’.⁹

Yet, whereas longer-standing EU member states have historically addressed kin-minority issues within a framework of meaningful inter-state cooperation, such an approach has been noticeably absent in contemporary CEE. Here, the sustained engagement by international organisations in the region since the 1990s has yet to dilute the logic of competition between states still structured according to the Westphalian logic of ‘groups competing for the ownership of a territory’ (Palermo, 2015, p. 29). The political manipulation of minority-kin-state links can be seen, for instance, in Romania’s recent attempt to frame Hungary’s kin-state support not as a complement to domestic policies of minority accommodation, but as a pretext for the home state to abdicate its own responsibilities in this area (Government of Romania, 2018, pp. 16, fn 4). A further interview respondent in Romania conveyed the current state of affairs well by declaring that:

‘as long as the Transylvanian Hungarian community has been living as a minority, it has never before been in such a legally and politically consolidated position. ... The problem is that this consolidation is built on institutions that were created to a large extent with the support of Hungary. ... [and their] foundations ... are in sharp conflict with the Romanian concept of the nation-state.’¹⁰

In seeking to redraw this political project along more pluralistic lines, respondents expressed little faith in the continued capacity of international organisations to influence the situation following Romania’s entry to the EU in 2007.¹¹ Against this background, one referred to the ‘confrontational’ politics now pursued by the Hungarian government at the European level and its unwillingness to ‘open new fronts with the Romanians’, claiming that no meeting of

the intergovernmental commission had been called for a number of years.¹² There were further allusions to the lack of extra-territorial support actually provided by the kin-state, including the limited practical value of obtaining Hungarian citizenship. Here, one respondent observed that ‘Hungarian national politics went for quantity, how many citizenships it can boast,’ rather than paying attention to the actual quality of support provided in situ for the kin minority.¹³ The Hungarian government was thus called upon to: ‘fill citizenship with substance, so that there are advantages too. Advantages that can be enjoyed here in the homeland without going to Budapest.’¹⁴

Overall, while respondents clearly welcomed direct support from the kin-state in different areas, many were conscious of a growing instrumentalization of kin minority issues by a Hungarian government which ‘regards [the entire transborder Hungarian population] as a diaspora, so a multitude of Hungarian individuals who live beyond the borders, and not as a community that lives in its historical homeland and is supported in this.’¹⁵ Within this context, the Hungarian citizenship extended after 2011 was not understood as a complement to a (primary) Romanian citizenship embracing Hungarians within a pluralistic political community: in so far as it was ascribed anything other than symbolic value, it was seen as something that might help to consolidate Hungarian identity in the face of a nationalising home state and mobilise the local community behind claims for autonomy.¹⁶ Given the many different views within the community on the desirability and utility of obtaining Hungarian citizenship, one academic respondent argued for a fuller and more open public debate regarding the extent and scope of Hungary’s trans-sovereign engagement, yet noted that the dominant political discourse allowed little space for this.¹⁷

Conclusion: Moving Beyond the *Status Quo*

In parallel to and aided by European integration, we have witnessed an expansion in the cross-border political and social institutionalisation of the ties between kin-states and their co-ethnics abroad in the last decade, which has strengthened their mutual interdependence. The existence of dual and overlapping obligations vis-à-vis members of ethnocultural minority groups, reinforced by the strengthening of the ties between a kin-state and its co-ethnics abroad, raises the following question: Can the responsibility for minority protection be shared fairly between a home-state and a kin-state?

According to Nollkaemper, sharing responsibility is a novel practice in international law which has been welcome in the global governance of peace-keeping, climate change, migration and conservation of natural resources. Generally, it is intended to address responsibility gaps in situations in which inter-state cooperation has already been agreed (Nollkaemper, 2018). In political theory, conceptions of shared responsibility have been widely discussed in relation to German collective guilt for the atrocities perpetrated during the Second World War (Arendt, 1963) and, more recently, regarding the allocation of responsibility for global poverty (Young, 2011; O'Neill, 2016). Young argues that the responsibility for structural processes that have unjust outcomes extends beyond a state's borders and it is collective as well as personal in that we all participate in those processes that produce and perpetuate harm (Young, 2011, pp. 95-122). More specifically, O'Neill argues that the (home-)statist approach that dominates discussions on the allocation of responsibility for justice fails to value the potential of other agents to contribute to justice and to define their involvement in terms of *justiciable rights* (O'Neill, 2016, pp. 151-192). Owen highlights the ground-breaking normative importance of the commitment already assumed by the international community to share the responsibility for capacity-building and disposition-

building in relation to human rights (Owen, 2018). Yet, despite the persuasiveness of such accounts and the highlighted benefits of sharing responsibility, international law continues to affirm the centrality of the principle of independent responsibility of states and international organisations (Nollkaemper, 2018).

In our view, the potential of sharing responsibility between a kin-state and home-state merits serious consideration, as a means of limiting the instrumentalisation of a kin-state's engagement and strengthening its commitment to protecting co-ethnics abroad as members of indigenous minority groups. We endorse the principle of sovereignty and, in line with the European commitment to full and effective equality, assert that home-states have the primary duty to achieve equality of citizenship, as well as one to fairly accommodate their internal cultural and linguistic diversity. However, consistent with the Bolzano/Bozen Recommendations, we also acknowledge and build upon the assertion that kin-states have a legitimate interest in their co-ethnics abroad which is often found articulated in their domestic legislation as a duty of care.¹⁸ Building on these, we propose a re-articulation of the relationship between a kin-state and its co-ethnics abroad in the following way:

a. A kin-state's engagement with its co-ethnics abroad is legitimate, as long as it contributes to their protection as members of minority ethno-cultural groups in their home-states.

As shown in the first section of this paper, the norms and practices of minority protection in Europe have been made consistent with liberalism's central view that membership in a state generates legitimate demands for political, social and cultural justice. *Prima facie* the nature and extent of a kin-state's engagement with its co-ethnics abroad suggests that its duty of care, if viewed as responsibility for justice, is generally stronger than its human rights duties,

but weaker than that owed by a state to its (resident) citizens. Even though the trans-sovereign scope of a kin-state's responsibility suggests some empirical similarity to cosmopolitan models of justice, the nature of its obligations and the importance conferred to common belonging as national membership brings it closer to liberal nationalism. The obligations tied to citizenship remain special: they only extend to those who are members (and residents), and their nature and scope are determined by the social and political arrangements in a specific country, which often differ from one to another (Dworkin, 2005; Sangiovanni, 2007). For liberal nationalists the sense of common belonging defined by membership in a nation-state is necessary for realising political and social justice (Tamir, 1993; Miller, 2007). Distinctively, however, a kin-state's obligations are generated by common ethno-cultural membership, they are different in nature and scope than those of kin-state citizenship, but overlap with those of home-state citizenship.

Consequently, we suggest that in order to be consistent with the allocation and extent of a liberal state's commitment to social and political justice and to accommodate its linguistic and cultural diversity, and at the same time, to enhance home-states' cultural duties, shared responsibility for minority protection needs to be tied to an idea of complementarity between a kin-state's engagement and home-states' multiculturalism. However, this would require, as a minimum, cooperation rather than competition between the states involved, as well as converging notions of fairness in relation to the accommodation of ethnocultural minority groups. Complementarity may strengthen a home-state's responsibility towards its non-dominant ethnocultural groups, but it would also allow kin-states to intervene when home-states fail to meet their commitments and/or lack the financial capacity to fulfil them, such as in the case of ethnic Hungarians in Romania and Ukraine.¹⁹ Therefore, we suggest the following:

b. Home-states have the primary duty to achieve full and effective equality between their citizens, as well as one to accommodate fairly their internal cultural and linguistic diversity. A kin-state's engagement whether in the form of direct assistance or political pressure on behalf of its co-ethnics abroad should complement home-states' domestic commitments to cultural justice.

The main obstacles to articulating an understanding of shared responsibility for minority protection between a kin-state and home-state consistent with the liberal egalitarianism advocated by the EU and the norms governing inter-state relations in Europe are: the existence of competing notions of fairness in relation to minority protection²⁰ and the securitisation of certain minority groups in inter-state relations, such as the Hungarian minority in Romania in the early 1990s or the Russian minorities in Ukraine and the Baltic states. Different institutional designs alter the relations between a citizen and state, and hence they generate different notions of fairness (Sangiovanni, 2007; Bellamy and Kroger, 2019). For example, the social and political institutions in CEE and beyond remain strongly embedded in the history of minority-majority relations, the history of the relations between kin-state and kin-minority groups, different institutionalisation of multiculturalism, and most importantly, a political context in which nationalism was (re-) institutionalised and, in many cases, is being diffused beyond the kin-states' borders.

This securitisation of the relations between states and kin-minority groups has strongly shaped the accommodation of minority ethnocultural groups in CEE following the collapse of communism. Scholarship in this area highlights the fact that minority political mobilisation has been seen as a 'subversive tendency challenging the dominant architecture of the [nation-

] state system’, rather than something associated with ‘positive conceptions of what justice and democracy require’ (Bauböck, 2000, pp. 12–13). Furthermore, it has been stressed that the existence of a kin-state which actively engages with its kin-minority groups often leads to the internationalisation of domestic disputes (Roter, 2011). As a result, the existence of minority groups in Europe whose accommodation remains securitised impedes not only inter-state cooperation, but, as Kymlicka convincingly shows, also weakens any attempts at internationalising minority rights as a matter of justice: ‘security fears have driven out considerations of justice, distorting decisions about both categories and conditions, with results that are detrimental not only to justice, but also, paradoxically, for security’ (Kymlicka, 2007, p. 9).

A norm of complementarity which is not only consistent with the norms and standards of minority protection and strengthens the liberal commitments of home-states towards their citizens, but also aims to allocate fairly the responsibility for minority protection should at the very least mark the limits of a kin-state’s engagement also by strengthening the voice of minority ethnocultural groups and ensuring their participation in inter-state decision-making. Minorities’ own perspectives on their relations with kin-states and how the latter might potentially support their accommodation within the home state are all too often overlooked.

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² Henrard stresses that in contrast to the UN Declaration, the framework ‘is a Convention and hence legally binding on the contracting states, but it cannot be denied that the wording of the Convention leaves considerable discretion to the states’ (2008, p. 94).

³ Bellamy and Kröger substantiate this point by showing that the acceptance of the idea of differentiated integration has substantially changed the nature of inter-state cooperation between the EU member-states. The empirical conditions that allow to apply principles of social and political justice to different forms of cooperation in the EU are: the existence of political community created by the EU citizenship policy, the increased inter-state cooperation in all sectors, and the deepening of cross-border cooperation which created the possibility to accommodate capacity and sovereignty concerns and might lead, or has already led, to institutional harmonisation (Bellamy & Kröger, 2019).

⁴ The Bolzano/Bozen Recommendations only offer a sociological understanding of integration rather than a normative one. Integration appears to be synonymous with social cohesion. An attempt to put forth a definition of integration can be found in the Ljubljana Guidelines on Integration of Diverse Societies (OSCE HCNM, 2012, Introduction): ‘Integration is a dynamic, multi-actor process of mutual engagement that facilitates

effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels.⁷

⁵ The most marked instance of this can be seen in efforts by states (e.g., Russia, Romania, or Serbia) to strengthen their regional power by using their ties with co-ethnics abroad to engage in overt or hybrid intervention.

⁶ See Pudzianowska in this volume.

⁷ Interview with Mayor of Sfântu Gheorghe/ Szentgyörgy, 25 April 2016. ROM-1.1.1 in Smith (2020).

⁸ Interview with member of Hungarian People's Party of Transylvania, Sfântu Gheorghe/ Szentgyörgy, 25 April 2016. ROM-1.1.3 in Smith (2020).

⁹ Interview with member of Democratic Union of Hungarians in Romania, Cluj-Napoca/ Kolozsvár/ Klausenburg, 14 October 2015. ROM-1.3.2 in Smith (2020).

¹⁰ Interview with member of Political Science Department, Babeş-Bolyai University, Cluj-Napoca/ Kolozsvár/ Klausenburg, 12 October 2015. ROM-2.2.3 in Smith (2020).

¹¹ Interview with Mayor of Sfântu Gheorghe/ Szentgyörgy, 25 April 2016. ROM-1.1.1 in Smith (2020); Interview with member of Democratic Union of Hungarians in Romania, Cluj-Napoca/ Kolozsvár/ Klausenburg, 13 October 2015. ROM-1.3.3 in Smith (2020).

¹² Interview with member of Hungarian National Council of Transylvania and Hungarian People's Party of Transylvania, Miercurea Ciuc (Csíkszereda), 27 April 2016. ROM-1.2.3 in Smith (2020).

¹³ Interview with President of Hungarian People's Party of Transylvania, Cluj-Napoca/ Kolozsvár/ Klausenburg, 12 October 2015. ROM-1.3.5 in Smith (2020).

¹⁴ Interview with President of Hungarian People's Party of Transylvania, Cluj-Napoca/ Kolozsvár/ Klausenburg, 12 October 2015. ROM-1.3.5 in Smith (2020).

¹⁵ Interview with Associate Professor, Babeş-Bolyai University, Cluj-Napoca/ Kolozsvár/ Klausenburg, 16 October 2015. ROM-2.2.1 in Smith (2020).

¹⁶ Interview with researcher at the Romanian Institute for Research on National Minorities, Cluj-Napoca/ Kolozsvár/ Klausenburg, 14 October 2015. ROM-2.2.2 in Smith (2020). The implication here was that autonomy could only be achieved by local community leaders themselves, with another respondent observing that Hungary supported autonomy only 'declaratively' (Interview with Associate Professor, Babeş-Bolyai University, Cluj-Napoca/ Kolozsvár/ Klausenburg), 16 October 2015. ROM-2.2.1 in Smith (2020).

¹⁷ Interview with member of Department of Social Sciences, Sapientia University, Miercurea Ciuc/ Csíkszereda, 27 April 2016. ROM-2.1.1 in Smith (2020).

ROM-2.1.1, 27 April 2016.

¹⁸ For example, Article 6.2 of the Constitution of the Republic of Poland (1997) states that '[t]he Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage' (Polish Sejm, 1997). Article D of the Fundamental Law of Hungary defines its kin-state duty of care in the following way: '[the constitution is] motivated by the ideal of a unified Hungarian nation, Hungary shall bear a sense of responsibility for the destiny of Hungarians living outside her borders' (National Assembly, 2011).

¹⁹ For example, the most recent report of the Advisory Committee on the Framework Convention for the Protection of National Minorities [FCNM] highlights that financial support of the Romanian state allocated for the preservation and promotion of the cultures of national minorities remains limited (Advisory Committee on FCNM, 2017, Art. 5). However, this report fails to acknowledge that education and culture remain chronically underfunded in Romania, and to discuss this issue in the broader context, for example of the overall quality of primary and secondary education in Romania (see World Bank, 2007).

²⁰ Observe, for instance, the differing interpretations of minority rights put forward by Hungary and Romania during the signing of the 1996 bilateral treaty between the two states, specifically in relation to the CoE Parliamentary Assembly Recommendation (1201/1993) for an Additional Protocol to the European Convention on Human Rights (Salat, 2014, p. 133).