

Carl Schmitt's Legacy in International Law *Volksgruppenrecht* Theory and European *Grossraum* Ideas from the End of World War II into the Present Day

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Abstract

This article looks at Carl Schmitt's "legacy" in international law, namely his ideas of *Grossraum* ("greater area") in connection to *völkisch* ("ethnonationalist") conceptions of minorities' policies. It illustrates how Schmitt's conception of *Grossraum* theory, which was a key concept of the National Socialist worldview, was further developed in the postwar era by a special branch of international law for a "völkisch defined Europe". To do so, it begins by analyzing three central dimensions in Schmitt's approach: legitimation in law, *Volk/Volkstum* policy (concerning ethno national "folk" peoples and their distinctive characteristic "folkdoms") and geopolitically framed international law. It goes on to show how these were taken up and further developed ideologically in the *Grossraum* concepts of postwar *Volksgruppenrecht* theory (concerning "folk-group" rights and legal frameworks). Here, the focus is not only on demands of autonomy for minorities understood as *Volksgruppen*, but also on the implementation of an ethno regionalism and ethnic particularist federalism set against the vision of a democratic Europe. The ideologies seen as Carl Schmitt's "legacy" in international law thus have the goal of disempowering nation-state sovereignty, as well as shattering democratic nations and reordering them into ethnically homogenous *Volksgruppen* in a European *Grossraum*.

Franz L. Neumann was among the first to highlight the theoretical context of attempts to reconceptualize international law during National Socialism, as well as German ideas of geopolitics and of *Volksgruppenrecht* ("folk-group legal frameworks" based on ethnic group membership) in regards to Europe's political order. In his trailblazing study from the early 1940s, *Behemoth: The Structure and Practice of National Socialism 1933–1944*, Neumann was already describing this theoretical triad as a kind of "German Monroe Doctrine", thereby recognizing that beyond a political expansionist ideology, there was an attempt to establish a new international law framework in which objective rationalism and state sovereignty would give way to an ethno territorial conception of *Grossraum* (a "greater area" in geopolitics) characterized by dominance through force and power politics.¹

At the theoretical core of National Socialist thought, legal frameworks were closely tied to the categories of *Volk* ("folk/people" in the sense of ethno-nation) and *Raum* ("room/space/area"), or "Blut und Boden" ("blood and soil"). In diametric opposition to minorities protections anchored in international law, the National Socialist goal was to create a legal order emanating from *Staatsrecht* ("state rights" or "state law"), forming a new international law framework in which the sovereignty of nation-states is to be abrogated.²

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The system of minority's protections, along with Europe's entire international law framework, was to be rejected, as Germany also demonstrated through its withdrawal from the League of Nations shortly after the Nazi takeover. The League's policies and the protection of minorities in international law were called an "extermination campaign against the *Volksgruppen*" ("folk/ethno national groups", sing. *Volksgruppe*), and even a "war of extermination".³

In the National Socialist view, the necessary foundation for a well-functioning international law framework was not to be found in the generally accepted formula of rationalism plus sovereignty, but rather in a "shared political-ideological basic approach" grounded in a "general recognition of the *völkisch* principle" (*völkisch* meaning "Volk-centric" or "ethno nationalist").⁴ Here, the starting point was to be found in a "*völkisch-defined Europe*", and not a "liberal-democratic-statist" one.⁵ And because Germany was ostensibly the only European state where the beginnings of this legal paradigm were also anchored in *Staatsrecht*, it should also take on the missionary task of exporting this legal understanding to all of Europe:⁶

"The beginnings of a *Volksgruppenrecht* are already developed in Germany, but are only barely apparent in the rest of Europe; nonetheless, we acknowledge that *Volksgruppenrecht* ultimately aims at a *general European solution* and will also achieve it too. A general European *Volksgruppenrecht* is possible, because it is necessary."⁷

Hitler summarized the international law understanding underlying *Volksgruppenrecht* with the succinct formulation "Human rights break *Staatsrecht*",⁸ whereby it must be emphasized that this definition of human rights did not arise from anything like international conventions, but rather from a German natural law conception that elevated the *völkisch* principle to a human one and demanded universal recognition for this fundamentally anti-universalist position.⁹

In contrast, Neumann understood the anti-statist, anti-Enlightenment and anti-liberal thrust of the attempted geopolitical *Volk*-based reorganization of Europe emanating from the German Reich as an anti-egalitarian and anti-rationalist rejection of the universalist principle of equality before the law and a degradation of the "majorities in the conquered territories to the status of slaves";¹⁰ more than that, he also saw the calculated power politics behind it. By using the "characteristic trick of every National Socialist criticism of traditional Western conceptions", namely exploiting a problematic situation along with the necessary criticism of it – in this case the real minorities conflicts in Europe, which were marked by racist and *völkisch* stigmatization – and then blaming liberal democracy for all these problems, the effect became recast as the cause, so that irrational solutions could then be offered as plausible ones. In the concrete case of the debate surrounding the legal personhood of minorities, this meant, as Neumann wrote, that the National Socialists made "no attempt to transform the socio-economic structure so that from a formal equality there might emerge a real one; instead, they use[d] a legitimate critique" of this deficiency in minorities protections during the League of Nations era "to abolish even legal equality":

"This technique characterizes the whole conceptual and intellectual framework of National Socialism. In their hands, the 'concrete personality' of the folk group really means differentiation among the groups so as to play one off against the other. The conqueror imposes a hierarchy of races. The folk-group idea is nothing but a device to hold some groups down while inviting others to share in the spoils of the conquest. [...] Descent takes precedence over citizenship. Racial Germans throughout the world remain Germans, members of the folk group, subject to its law. [...] Recognition of the minority as a public corporation, as the Germans understands it and has applied it in

Czechoslovakia, Hungary, and Romania, thus creates a state within a state and exempts the German group from the sovereignty of the state.”¹¹

Carl Schmitt and the *Grossraum* order in international law

In his analysis of the international law development of the “German Monroe Doctrine”, Neumann made direct reference to Carl Schmitt, characterizing him as the “leading voice in the Nationalist Socialist revisionist chorus”,¹² but Schmitt himself rejected the idea of a *German* Monroe Doctrine.¹³ However, his rejection was not so much in principal, but more terminological. In fact, the structural principle of the American Monroe Doctrine was viewed quite positively by Schmitt, because it created the basis for an international order and legal framework that was no longer based on the rights of nations and states, but of *Völker* and *Volksgruppen*, thereby offering the foundation for a “true community of peoples”.¹⁴

Furthermore, it also sketched out the *Grossraum* as a new entity in law, one that was conceptually envisioned as combining a worldview idea with physical power.¹⁵ Mathias Schmoeckel argued, that this theory has “combined the ethnic homogeneity” with the “hegemony over many different peoples on the one hand with the claim to predominance free of restrictions of constitutional or international law on the other”.¹⁶

Besides the international law scholar Hermann Raschhofer,¹⁷ there was indeed nobody more significant than Carl Schmitt during the time of National Socialism for the theoretical formulation of *Grossraum* international law concepts in connection to *Volkgruppenrecht* and geopolitics. His study concerning a “Grossraum Political Order in International Law with a Prohibition on Intervention by Spatially Foreign Powers” – which was expanded upon by his later work *Land and Sea*¹⁸ – outlined the main details of the proposed reordering of the international law framework in Europe. Schmitt’s approach had three central dimensions: legitimation in law, *Volk/Volkstum* policy (“folkdom” referring to the entire utterances of a *Volk* as an expression of its ethnonational distinctiveness), and geopolitically framed international law.

To help legitimize his *Raum*-ordering principles in international law, Schmitt turned to the American Monroe Doctrine declared in 1823, which he saw as the first and most successful example of a *Grossraum* principle anchored in international law. In striving to insert *Grossraum* principles into international legal theory, Schmitt did not want to directly adopt the Monroe Doctrine itself, but instead highlighted the core idea he saw in its legal system, in order to make it “fruitful for other Lebensräume [‘living-spaces’] and other historical situations”.¹⁹ Schmitt was thereby concerned with the “extracted core” of the Monroe Doctrine and its transferral to the Greater German context.²⁰ For him, this involved two central ideas: the general introduction of a *Grossraum* theory into the field of international law, and the tying of this idea to the “basic principle of non-intervention by spatially foreign powers”.²¹ What is striking is that Schmitt recognized how the non-interventionist agenda of the American Monroe Doctrine had ultimately become the legitimation for the United States’ own imperialistic interventions²² – which also implicitly suggested the character of the German adaptation of this concept, an adaptation that was not to be imperialist in the traditional sense, but that would still very much aim for the universal application of its own anti-universalist principles,²³ ones that, in Schmitt’s words, should be “valid for the entire world”.²⁴ Here, Schmitt put the concepts of “idea” and “Raum” (here translated as “space”) at the heart of his conception of the desirable international law framework:²⁵

"For us, there are neither spaceless political ideas nor, reciprocally, spaces or spatial principles without ideas. It is an important part of a determinable political idea that a certain Volk carries it and that it has a certain opponent in mind, through which this political idea gains the quality of the political."²⁶

This "political idea" was further conceived by Schmitt as an ordering principle that dominated each *Grossraum* while also protecting it from interventions by "spatially foreign powers".²⁷ However, while Schmitt used the American Monroe Doctrine to legitimize his conception of a *Grossraum* order in terms of legal theory, it nonetheless remained irrelevant in his concrete formulation of *Volkstum* policy and geopolitically framed international law.

In terms of *Volkstum* policy, Schmitt looked towards the *Volkgruppenrecht* that had been newly developed by the Nazi Reich in the "Central and East European Grossraum". In reference to scholars including Hermann Raschhofer, Kurt O. Rabl, Werner Hasselblatt, Karl Gottfried Hugelmann, Gustav A. Walz and Max Hildebert Boehm, Schmitt wrote that the "German school of Volk and Volkgruppenrecht has clearly elucidated the antithesis that separates a Volkgruppenrecht built on the concept of Volk and Volksgruppe from a minorities protection scheme constructed on the basis of individualistic liberalism".²⁸ However, in terms of international law, it was still necessary to integrate this approach within the context of the ordering principle of the *Grossraum*. The "political idea" that Schmitt had placed at the theoretical center of his conception for a *Grossraum* order anchored in international law, and which was crucial for geopolitical dominance, thus put the "protection of the Volk-oriented uniqueness of every Volksgruppe" at its focus; however, this protection was not to be the affair of "spatially foreign powers [...] but rather of the Volk-oriented and state powers responsible for this Raum; it is, in particular, an affair of the German Reich."²⁹

Leaving aside the fact that such arguments already represented a defensive argument against any potential American intervention triggered by the Nazi Reich's political, military and terrorist *Volkstum* policies in eastern Europe, Schmitt highlighted the political core of what would become the fundamental idea for establishing a European *Grossraum* order: the "National Socialist Volk idea", which has ostensibly established "a German right to protect those German Volkgruppen of foreign state citizenship", thus representing a "genuine basic principle of international law" – at least according to the standards of the new international law framework conceived by Schmitt:

"This is the political idea that has the specific meaning of a Grossraum principle under international law elucidated here; the political idea for the Central and East European space in which there live many Völker [pl. of Volk] and Volkgruppen who are, however, not racially alien from one another – except for the Jews."³⁰

Building upon this *Volkstum* policy foundation, Schmitt then further developed his approach in terms of geopolitically framed international law, focusing on the concept of the Reich – here, it must be noted that while Schmitt held an anti-statist interpretation of sovereignty, he also felt that it ultimately could not be restricted by laws.³¹ According to him, every Reich has a *Grossraum* upon which it extends its political ideas, a *Raum* that cannot be subjected to interventions by spatially foreign powers. The "sun of the Reich concept" would then rise in geopolitical terms when the entire world is "sensibly" divided into *Grossräume* (plural of *Grossraum*), which in turn are fundamentally organized by the "order-producing effect" of the prohibition on interventions by spatially foreign powers.³² In terms of international law, the Reich concept thus summarizes the connection between *Grossraum*, *Volk* and political idea in a very concise manner, while standing in explicit contrast to the state concept and its Universalist claims. According to Schmitt, the goal was also a conceptual "dethroning of the state concept".³³

“The new ordering concept for this new international law framework is our Reich concept, which emanates from a *völkisch* Grossraum order upheld by a Volk. [...] From what was a weak and impotent Middle Europe has emerged a strong and unassailable one, ready to take its great political idea, namely respect for every Volk as a living reality determined by species and origin, blood and soil, and to extend it into the central and east European Raum while also repelling the interference of spatially foreign and unvölkisch powers.”³⁴

Here, the political thrust was directed not only towards a *völkisch* negation of the state concept in international law, but also the de facto disempowerment of nation-state sovereignty. *Reich* and *Grossraum* functioned as antithetical concepts to the “small-Raum, state-oriented conceptions of an interstate law framework flourishing in the shadow of Anglo-Saxon universalism”.³⁵

With this particular conception of geopolitically framed international law, combined with *Volksgruppenrecht* theory, the goal was an *ethnopolitical Grossraum order for Europe* (merging here the terminologies of Max Hildebert Boehm and Carl Schmitt).³⁶ The historical starting point for this “*Volk-ization*” of the political, with its considerable potential for shattering states, was the attempt to revise the Paris Peace Conference treaties signed after World War I, along with the resulting reorganization of states, and to modify these along ethnic lines.³⁷ Here, the political perspective was shifted away from the (liberal/democratic) nation/state subject to the (ethnonationalist) *Volk* subject. This particular approach, which was heavily promoted under National Socialism in both theory and practice, would experience a major renaissance after the end of World War II in terms of legal theory and international law. The three dimensions of Schmitt’s approach – legitimation in law, *Volkstum* policy and geopolitically framed international law – would become the inheritance of a branch of international law, operating under the banner of *Volksgruppenrecht* theory, that was engaged with systematically developing Schmitt’s conception of an international law framework for a *Grossraum* order in Europe, thereby trying to implement in practice Schmitt’s call for an anchoring of *Volksgruppenrecht* in international law and striving for a far-reaching reshaping of international law towards an *anti-statist legal framework*.

Schmitt’s postwar legacy: *Volksgruppen* theory and *Grossraum* thought in Europe

The defeat of National Socialism by the Allies was the basis for an anti-fascist restructuring of the European order. Associated with this political reorganization was the launching of the United Nations, which represented a second attempt after the League of Nations to build “a world order on the basis of a collective security system with a codified legal framework”.³⁸ On the level of international law, a central element of this attempted new order was the implementation of universally guaranteed human rights for the individual, along with anti-discrimination provisions, while at the same time rejecting collective-rights provisions or positively discriminating (special) rights, like those demanded by *Volksgruppenrecht*.

Despite all the formal shortcomings of the minority’s protection mechanisms of the League of Nations era, there was a consensus that the preceding system of international law had been a failure, also in light of the politically inflamed minorities conflicts that had ultimately triggered the destruction of the European nation-state system. After all, attempts to reshape international law both legally and politically through the formulation of *Volksgruppenrecht* and *Grossraum* policies were not insignificant in helping to trigger World War II – and a logical consequence of this was the later rejection of *völkisch* collective rights. The legal scholar Iris Bils has rightly noted that the birth of the UN marked a “completely new era” because the focus had shifted from the protection of minorities as groups (or even as *Volksgruppen*) to the protection of individuals instead.³⁹ As a consequence, the protection of national minorities was no longer treated as a distinct field of international law after World War II.⁴⁰

Although there did exist on the level of international treaties a consensus rejecting collective-rights provisions in the sense of a European *Volksgruppenrecht* and thus of an *ethnopolitical Grossraum order for Europe*, this did not mean that the end of the National Socialist regime had brought about an extinction of *Volksgruppen* and *Grossraum* theories, or that their advocates had disappeared into political insignificance.

Quite the contrary: after a phase of political retreat, there would soon emerge a new attempt to establish in law and politics a framework of *völkisch* collective rights for a European *Grossraum*.⁴¹ However, instead of the *Grossraum* order anchored in international law as conceptually established by Schmitt, the focus of postwar scholarly debates on international law, especially those conducted in Austria and Germany, was now squarely focused on the concept of the *Volksgruppe* – which Schmitt himself had also utilized, forming the conceptual and political basis of his *Grossraum* theory.

Because this postwar theory of a European *Volksgruppenrecht*, with its goal of an *ethnopolitical Grossraum order for Europe*, does not begin with concrete plans for ordering the European *Raum*, but instead emerges from a specific *völkisch* understanding of politics and society while also harking back to various theoretical and legal approaches towards legitimizing this ambition, it is important to examine not only the ideas of *Volksgruppen* theory for organizing Europe on a local, regional and continental level, but also its *Volk* policy foundations, as well as its attempts to achieve legitimacy through intellectual adaptations. Here, besides theoretical and conceptual borrowings from Schmitt, there are also formal similarities in emulating his strategy of grounding his geopolitically framed international law conceptions on a *Volkstum* policy foundation, while also reinforcing this in terms of legitimation by integrating and reinterpreting existing legal norms – this was an attempt at securing legitimacy in international law by politically instrumentalizing and adapting legality itself, meaning the political use and reinterpretation of positive law in order to conceptually substantiate the reformulation of an international law framework that until that point had been solely conceived on the grounds of natural law.⁴²

Since the legal legitimation approach seen in the postwar era is formally identical to Schmitt's efforts, but chooses a fundamentally different focus in terms of specific content, its conceptual orientation should be briefly described here.⁴³ The project of politically and legally legitimizing the goals formulated by *Volksgruppen* theory since the end of World War II is based on an attempt to normalize these goals. An impression should be created that a European order based on the *Volksgruppe* is actually a necessary part of human life. These normalization efforts take place on two levels: in terms of politics, the *völkisch* model of society should be incorporated as generally applicable within currently existing legal norms, which in turn are to be correspondingly "expanded" or reinterpreted; at the same time, in terms of law, this should lead to the impression that *Volksgruppenrecht* has long been a part of the international law framework, or that the latter is almost automatically evolving towards this model. What makes up this legitimation framework are the concepts of natural law and homeland rights on the one hand, and a specifically *völkisch* reading of self-determination rights and human rights on the other.

Building upon the Christian understanding of natural law in its premodern approach, a legal theory foundation is developed in which *Völker* and *Volksgruppen*, as ethnic communities of shared destiny, themselves have intrinsic value as part of the Order of Creation according to God's plan, a value that is thus not open to question. The motif of the homeland and the postulate of homeland rights connect the theoretical elements of an ostensible naturalness and autochthonous indigeneity with the territorial factor, which is of central importance in regards to the transition from a *Volksgruppe* without autonomous rights to a *völkisch Volk* with corresponding corporate powers.

While the argumentation based on natural law and homeland rights is meant to theoretically legitimize the legal claims of the *Volksgruppe*, it is the motif of self-determination rights along with the motif of human rights that lets *Volksgruppen* theory establish a direct connection to positive law. *Volksgruppen* theory thus appropriates the liberal-democratic norms of self-determination rights and human rights for its own argumentation, reshaping them in *völkisch* terms by interpreting them in a collective sense rather than an individual one.

In terms of content, the *Volksgruppen* concept takes a romanticized view of the *Volk* and politicizes it (just as Schmitt did upon a *Volkstum* policy foundation) by extrapolating a *Raum*-ordering framework as a consequence of the cultural division of humanity into *Völker* and *Volksgruppen*. Social and political conflicts thus become naturalized and intertwined with the emergence of ethnicities. In thinking of ethnicity as an essential category and promoting it as the highest good of the human being, the political goal then becomes the complete social and political segregation of people along ethnic lines, along with the creation of separate ethno-regions for the various *Volksgruppen*: "Emphasis is put on the ethnic and cultural homogeneity of the populace, or at least their similarities in culture and mentality, extending to a shared sense of having been affected by the negative effects of outside forces. This leads to claims that the affected people share the same interests, in opposition to other regions or the higher-level system."⁴⁴

The proposed models of a European *Volksgruppenrecht*, built upon a *völkisch* understanding of humans and society, promote a homogeneity-based concept of ethnicity (not only within state borders, but quite often across them too) in which state citizenship is to be supplemented with a *Volk* membership defined through *völkisch* principles. Here, *Volksgruppenrecht* would always apply only to people whose *Volk* membership is not the same as the majority in their state of citizenship, but who are nonetheless treated as legal citizens of that state in accordance with the law and without discrimination, so that they are not impeded structurally or administratively in their life pursuits; *Volksgruppenrecht* would not apply to refugees or migrants. According to *völkisch* thinking, a multicultural society would ultimately destroy "the context in which a *Volksgruppenrecht* has its meaningfulness, due to the inclination towards dissolving all forms of *gewachsener* [organically 'grown'] national cultures, melting them into the randomness of countless groups and grouplets."⁴⁵

Here, discrepancies within a society are to be transformed by way of *völkisch* segregation into a general uniformity, a situation where the *Volk* is understood as a natural collective "that exhibits a common ancestry and differentiates itself from other natural collectives through its cultural, intellectual and often linguistic distinctiveness, along with a corresponding consciousness."⁴⁶ In this conception, ethnic identity becomes *the* main factor constituting a person's makeup. The members of a group defined by ethnic criteria are seen as sharing a "powerful essential collectivity", or even an "ethnic determinism", allegedly leading to "more uniformities in social conduct" between members of this ethnic group than would be the case between members of differing ethnic groups.⁴⁷ Differing social interests existing within an ethnic collective are thereby redacted out of the lived realities of actual people, as the real-world relevance of these differences is negated by the primacy of ethnicity.

Furthermore, ethnic parallel structures are to be created on all social and political levels, leading initially to a social segmentation within the affected nation's society, and then to a political autonomy bolstered by fiscal independence. This social separation is to be achieved primarily through the establishment of autonomous structures on social, cultural, linguistic, educational and religious levels, all in accordance with ethnic differentiation criteria. The political separation of a "*Volksgruppenraum*" ("folk-group space") then becomes primarily a question of time, as the growing independence of the socially constructed, gradually emerging "autonomous ethno-region" is further strengthened by self-government powers on the legislative, executive and judicial levels.

Such a *Raum*, defined in *völkisch* terms and regionally structured (i.e. even across state borders),⁴⁸ would act autonomously in all regards, gradually becoming isolated from the social and political frameworks of the relevant nation-state(s), a situation ultimately signifying the formation of ethnic *Grossraum* ghettos and the creation of “Volksgruppenzoos” (Karl Heinz Roth).

In this context, migration and immigration are to be categorically rejected, because a so-called “ethnopluralist” Europe should be internally based on ethnic homogeneity and externally based on *völkisch* exclusion, in order to safeguard the ostensibly “natural” character of each respective “homeland region”. The “ethnocentric ideological framework” thus represents no obstacle to a culturally determined definition of in-groups and out-groups, one that relies on a fundamental belief in human inequality.⁴⁹

The political goal here is the shattering of all ethnically “non-homogeneous” nation-states (which would concretely result in the complete breakup of Belgium and the separation of over one-third of France’s sovereign territory, to name just two examples) and the creation of an ethnoregional structure with autonomous *Volksgruppenräume* (“folk-group spaces”) within the framework of a European ethnofederation.⁵⁰ In such an ethnoregional Europe, the regions would be categorically defined in *völkisch* terms and framed as “natural” homelands, becoming organically conceived small units reflecting the identificational assertions of an ethnofederal “Nation of Europe”.⁵¹ The ethnoregional concept strives for the revision of state borders, which are ultimately to be nullified. The goal is the creation of a new European Reich combining “power politics towards the outside with an authoritarian formulation inside”.⁵²

The *Grossraum* concepts of *Volksgruppenrecht* theory

The attempt by *Volksgruppen* theory to reshape existing social and political achievements involves not only conceptions of humans and society, but also political and legal conceptions of structure and order. The *Raum*-ordering concepts of *Volksgruppen* theory are directly tied to its *Volk* policy concepts, as plans for a *völkisch* “normality” are transcribed onto the geopolitical structure of Europe, with the intention of reordering the continent according to principles of ethnic homogeneity. The goal here is the enforcement of a *völkisch* particularist model of society, as opposed to one guided by Universalist Enlightenment principles.

According to the concepts of *Volksgruppen* theory, the order of the European *Raum* is to be defined by three structural elements: *völkisch* autonomy, ethno regionalism and ethnic particularist federalism. These three *Raum*-ordering concepts are interwoven with one another, complementing each other and exhibiting theoretical overlaps, making it impossible to draw clear boundaries between them. Nonetheless, they are each integrally concerned with different vertical dimensions of how to order *Raum* and society.

Whereas the autonomy-oriented concepts are formally concerned with the position of an autochthonous *Volksgruppe* within the broader society of its ostensible “homeland”, along with the concrete legal and political structuring of this *Raum* in relation to other entities and actors, the concept of ethno regionalism is focused on structuring the territorial dimension of the *völkisch* units, employing ethnic legitimation arguments against the claims of other territorial groups. Ethno regionalism thereby constructs the relevant territory as a politically operative one in the first place, in demarcating it according to ethnic criteria as opposed to other potential ways of structuring (such as economic or social ones).

Furthermore, ethnoregionalism defines not only the internal structure of a *völkisch* region, but also regulates the horizontal relations between such regions. Paradigmatically speaking, the bonding together of these individual *völkisch*-defined regions is not to be achieved within a nation-state model, but rather within a European *Grossraum* that is federally structured according to ethnic principles. The new European sovereign entity to be established by this ethnic particularist federalism (which is not tied to concepts of national sovereignty) exhibits strong pre-Enlightenment tendencies following the principles of an ethnic hierarchical conception of collectivity; the goal here is the fundamental reordering of Europe through the creation of an ethnofederal Reich.

The principle of autonomy is aimed at empowering the *Volksgruppe* as a legal entity within the state (i.e. as a corporate body), so that it can exert – to different degrees in different areas – decision-making powers in political, judicial, economic and social spheres by issuing legal regulations as it sees fit within a self-administration framework, whereby this autonomous subject always remains bound to the wider state through ties anchored in *Staatsrecht*, and the territory subject to this special regulatory framework does not acquire the qualities of a sovereign state itself.⁵³ Autonomy is seen as the “key instrument for protecting the *Volksgruppe*” – with which the goal of internationalizing *Volksgruppen* politics can be further pursued⁵⁴ – and is extolled as the “only realistic way” to resolve minority’s conflicts.⁵⁵

Manifested as powers of self-administration, autonomy regulations are fundamentally oriented towards protecting the collective identity of a *Volksgruppe*, particularly in terms of substantial measures that expand and strengthen the collective separate identity through the “material privileging of the *Volksgruppe*” (Heinz Kloss) and the granting of “preferential treatment” (Franz Pan), to be accorded in the form of special rights separately from the rest of the populace.⁵⁶

“The bearer of autonomy must always be a group. The granting of autonomy thus implies the recognition of the group as a minority or *Volksgruppe*, as well as the acceptance of collective rights.”⁵⁷

Furthermore, the existence of a representative organ is also considered a prerequisite for autonomous self-administration, an organ recognized as legitimate by both the affected state and the represented *Volksgruppe*. However, it is also emphasized that only “bodenständige [‘tied-to-the-soil’] *Volksgruppen* and not immigrants with foreign Volk membership should come to enjoy such collective rights,⁵⁸ because the definitive basis is considered to be “traditional settlement within a specific *Lebensraum* enduring through generations”.⁵⁹

Whereas autonomy-oriented conceptions define the content of *Volksgruppen* rights and the different preconditions for granting them, it is ethnoregionalism that structures the corresponding territoriality for these concepts. It is in ethnoregionalism that the homeland rights and natural law of *Volksgruppen* theory find their *Raum*-ordering counterpart. Drawing upon *völkisch* ideas of a naturally grown, homogeneously structured *Volksgruppenraum*, ethnoregionalism strives to complement the envisioned ethnic order of Europe with a *Raum*-ordering one. Because a *Volk/Volksgruppe* and its *Raum* are conceptualized together as an indivisible unit with borders that are considered “immovable”,⁶⁰ethnoregionalism restructures the European nation-state system according to prepolitical criteria so that the political borders between states are no longer in force; instead, it is the purported cultural and/or ethnic borders between *Völker/Volksgruppen* that become important.⁶¹

"As a socio geographical term, a region is a spatially enclosed or coherent area with specific geographically defined borders, whose populace is endowed with specific shared traits and has the will to preserve their resulting distinctiveness, with the goal of further developing their cultural, social and economic progress."⁶²

As an organizational space that is both geographical and historical, the region transcends the spatially and temporally bound manifestations of national divisions, and is thus considered superior to the state in durability.⁶³ The basic framework defining the ostensibly necessary common traits of each region's populace is found in the ethnic classification criteria of *Volksgruppen* theory, according to which "these regions are homogenous in terms of language and culture"; alternatively, in the exceptional cases of "certain political polyethnic units", they should at least have an adequate feeling of belonging together.⁶⁴

In defining a region, it is not the shared economic or political interests that are highlighted, but rather (an alleged) common descent, culture and language,⁶⁵ because each *Volksgruppe* purportedly finds in the relevant region's cultural circumstances and landscapes "specific sources of inspiration and evidence of its own continuity", thereby corroborating that this *Volksgruppe* indeed has a territory "that belongs to it alone".⁶⁶

In this context, the international law theorist Guy Héraud emphasizes the "monoethnic principle" as the central aggregating element in the regional ordering of *Raum*. After a corresponding reshaping of Europe in terms of *Raum* policies, each monoethnic region should optimally contain between two and five million people, with the physical borders determined by ethnic, historical and economic criteria; "polyethnic" regions, if any at all, should remain an exception.⁶⁷ The region-focused conceptions of *Volksgruppen* theory are thereby oriented against the integrated nation-state (the rallying cry is "Contre les États – Les régionsd' Europe")⁶⁸ and also against the abolishment of prepolitical concepts of inequality stemming from ethnicity, while conversely promoting the postulate of an ethnically homogenous *Raum* for each *Volk/Volksgruppe*.

Volksgruppen theory's goal of transforming Europe into an ethno federal Reich is built upon concepts of personal and territorial autonomy, along with the territorial structuring of *Raum* according to ethnic regionalism. In order to achieve this goal, "the very structure of the nation-state needs to be shaken up through the emancipation of the communities and regions, simultaneously with the creation of a federation."⁶⁹ Its place would be taken by the *Volksgruppe*, as a coalition of people who share the same language and culture:

"This emphasis on Volk-based distinctiveness does not stand in contradiction with endeavors towards a united Europe. For this future Europe cannot be a Europe of Fatherlands – it must be a Europe of Völker, a sublime living symphony of the *concertare* of European cultures."⁷⁰

An important prerequisite of this federalism, in both domestic and continental terms, is that "the settlement areas of the different ethnic groups are enclosed and consolidated into political/administrative units."⁷¹ Understood as the "consummated form of regionalism"⁷² and the political "final objective",⁷³ this (ethnic-particularist) federalism should serve in a European multilevel system to geopolitically restructure the European *Grossraum* while also providing the political and organizational framework for the ethnic reordering of the continent. This conception of federalism as a *bündisch* order (an order within a *Bund* or "alliance") is built upon ethnoregionally structured territorial units (lands, cantons, provinces, constituent states, etc.),⁷⁴ thereby embodying – according to international law scholar Theodor Veiter – an amalgamation of "federal thinking and organic democracy",⁷⁵ meaning a political order that puts federalism and the rule of the *Volk*/people (in contrast to liberal democracy's "rule of the people") under the primate of ethnic homogeneity: "Ethnisme et fédéralisme forment un couple solidaire."⁷⁶

Grossraum order and European integration

According to Veiter, this kind of federalism is characterized by the “autonomous and democratic will-formation and legislative powers of small and medium-sized collectives, especially political and ethnic ones, towards the goal of realizing their own purpose”.⁷⁷ The concept of ethnofederalism thus refers not only to the internal framework of nation-states and region-states, but also – as a supranational ordering framework – to the overall European *Grossraum*. The federalizing of European nation-states according to ethnoregional principles while incorporating *völkisch* autonomy concepts is just the first step in the process of ethnic particularist federalization; the second step (and ultimate political goal) is the transformation of Europe into an ethnofederal Reich, thereby abolishing the modern nation-state order. This “federation of Volk-based collectives”, according to Guy Héraud, should take over the role of the “historical states” and replace them.⁷⁸

The idea of an “ethnocentric federalism” (Bruno Luverà) argues for a complete shift in sovereignty, taking it away from the European nation-states and conferring it upon a European central authority.⁷⁹ An integral element in the creation of this new European ethnofederation is the redefining of internal borders according to the parameters of what Guy Héraud calls “ethnismeobjectif” or “objective ethnism” (the French language differentiates between “ethnisme” and “ethnisme”):⁸⁰

“The states need to now [...] surrender significant powers upwards – to the European level – and downwards – to the lands and regions. However, European regionalism without the creation of a European Volksgruppenrecht would be too little.”⁸¹

A confederation structure on a continental level is rejected by *völkisch* theorists because in this scenario, sovereignty remains with the individual states and a plurality of sovereignties continues to exist; but in a federal order, sovereignty is single and indivisible, vested in the “composite group” – the ethnofederation:⁸²

“Europe is only possible as federation of states that give up sovereign rights to this collective, established by its free Völker living in secured homelands.”⁸³

Sovereignty – understood here to mean “unconditional authority to use force” and “irresistible physical power” – is to be taken away from the states:⁸⁴

“The necessary unity and order would then not be generated through a bureaucratic all-encompassing apparatus and the rulership of officials, but rather through a bottom-up, many-membered system based on building consensus continually and freely.”⁸⁵

The European federation – which is not to be founded on material values, but instead on cultural and spiritual ideas – as a “federation of monoethnic regions” (Guy Héraud) is built directly upon these regions as its immediate “members”, whereby the redemarcation of regional member states according to ethnic membership and linguistic borders indirectly transfers major functions to the *völkisch* collectives.⁸⁶ In this context, Peter Pernthaler highlights the “historical individuality” of such member states, which are to become politically independent carriers of statehood.⁸⁷ According to Fried Esterbauer, the *völkisch* federal state needs to be established upon “Volk-states, and not artificial states, as member states (region-states)”, because with the increasing size of political systems, “such as of a European Union in particular”, there is a decrease in ostensibly important feelings of (ethnic) belongingness.⁸⁸

In terms of the geographical or territorial reorganization of the European continent, the project of ethnofederalism is marked by competition between approaches that put more emphasis on ethnic-autochthonous concerns and approaches that focus more on ethnoregional components. While in the first case, nation-states considered to be already ethnically homogeneous would remain largely intact (whereby only Austria and Germany are actually considered “ethnically homogeneous”, despite certain reservations),⁸⁹ the second case proposes a federal regionalization for these nation-states too. As Esterbauer emphasizes, the main criterion for the demarcation and structuring of region-states would be “*landsmannschaftliche Verbundenheit*” (“countrymen bonds”), whereby the essential core of “Volk self-determination” within ethnic federalism is expressed through the creation of “Volk-states” instead of “artificial” states (i.e. the current modern nation-states).⁹⁰ The “geopolitical structuring” of such states, according to Héraud, must pay attention to “ethnic realities”.⁹¹ The goal here, as Bruno Luvèra has rightly criticized, is the “reunification of culturally homogenous spaces” and the curbing of intercultural and interethnic interaction.⁹²

With both the ethnic-autochthonous variants and the ethnoregional variants, the focus is thus on the dissolution of nation-state structures.

However, this envisioned new Reich, as a reactionary utopia, remains extremely vague. It is not really rendered as a precise institutional system, and is instead invoked as more of a sentiment. This exaltation of the Reich yearns for the restoration of a Europe before nation-states, which also implies a pre-democratic one. Instead of a pluralist political system, the goal is an authoritarian one, to be based on organic *Volkstum* conceptions. As a result of the unconditional preeminence given to ideas of unity, order and collectivity, the freedom of the individual is to be subordinated to the omnipotence of a European Reich (as a kind of “*völkisch*-regional anti-nation-state”). This Reich is perceived as a totalizing manifestation of unity founded upon “race” or *Volk/Volksgruppe*, in which (also similarly to Schmitt) clear friend-versus-foe conceptions help to define rigid borders between in-groups and out-groups.

Even though the real-world implementation of such a Reich concept must seem absurd, more recent developments in the European context concerning support for autochthonous minorities and/or *Volksgruppen* represent a concrete point of contact with the *Grossraum* theories of *Volksgruppenrecht*, due to a comparable emphasis placed on elements like *Bodenständigkeit* (“tied-to-the-soil-ness”), homeland connection, ethnic identity and linguistic authenticity, which all resonate with the international law proposals of *Volksgruppen* theory.

In this context, particular attention is drawn to the 1992 *European Charter for Regional or Minority Languages*, expressly intended for the promotion of “autochthonous” minorities – as ethnically defined collectives – through the establishment of collective special rights.⁹³ An objective specified by this *European Charter for Regional or Minority Languages* is the “the recognition of the regional or minority languages as an expression of cultural wealth” (Art. 7, Sec. 1a). Additional stipulated measures include respect for regional or minority languages as well as the facilitation and/or encouragement of their use (Art. 7, Sec 1b, c, d), for which the corresponding infrastructure is to be created and its existing elements promoted (Art. 7, Sec. 1f, g, h). The needs and wishes expressed by the minority groups are to be taken into consideration (Art. 7, Sec. 4). More comprehensive measures for promoting the use of regional and/or minority languages in public life stretch across many different areas, including education (Art. 8), judicial authorities (Art. 9), administrative authorities and public services (Art. 10), media (Art. 11), cultural activities and facilities (Art. 12), economic and social life (Art. 13) and transfrontier exchanges (Art. 14). Overall, the Language Charter presents a *völkisch*-collective conception of minorities that is no longer primarily oriented towards anti-discrimination provisions anchored in the rights of the individual, focusing instead on actively promoting the languages of autochthonous minorities and *Volksgruppen*:

“For the purposes of this Charter, ‘regional or minority languages’ means languages that are traditionally used within a given territory of a State *by nationals of that State who form a group* numerically smaller than the rest of the State’s population and different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants” (Art. 1a, emphasis added)

However, this promotion of a separate identity that already begins in international law actually reinforces interethnic differences in sociological terms instead of overcoming them; in fact, real-world experiences have shown that when specific categories of underprivileged persons are legally elevated as specially protected minorities, there emerges the fundamental problem that “these privileging measures elevate the relevant groups as special groups, thereby tending to run in principal against social integration”, as argued by Kay Hailbronner.⁹⁴

In practice, collective rights, as a regulatory framework for positive discrimination, have generally tended to increase interethnic tensions rather than diminish them, because they stimulate demands for minority protections that ultimately result in linguistically based segregation processes: “Group rights encourage supporters of ethnicity and thus a splitting of society all the way to segregation.”⁹⁵ Thus, it must be concluded that in many cases, the encouragement of ethnicity promoted by collective special rights is what led to the consolidation of a minority’s ethnic collective identity in the first place, by launching a process of ethnicization. Indeed, this process has led to a conflict between *völkisch* and democratic minorities policies, also resulting very much in a “question of survival for the European Union” itself, as described by Sabine Riedel:

“Without a political nation concept, one that makes all citizens equal before the law while effectively protecting the various ethnic identities from discrimination, the ethnic nation concept remains powerful and inflames conflicts between states. [...] EU member states can only work with its state peoples in constructively shaping the European integration process, and not with ‘Völker in the ethnic sense’, who challenge existing legal frameworks and even state borders themselves.”⁹⁶

Thus, in terms of both political theory and international law, the propositions of *Volkgruppenrecht* are used to shake up the nation-state order of Europe and disempower state sovereignties. Entirely congruent with Schmitt’s conception of a *Grossraum* order anchored in international law, the goal here is to reorganize and restructure the European *Grossraum* in accordance with *Volk* theory concepts, thus subjugating the people as *demos* to the *Volk* as *ethnos*. Ultimately, this model is – in Anton Pelinka’s words – the “absolute antithesis” of the individual’s freedom of movement and right to democratic self-definition.⁹⁷

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- ⁸³Franz Hieronymus Riedl, "Heimatgedanke und Europabewusstsein", in Karl Kurt Klein, Franz Hieronymus Riedl and Karl Ursin (eds.), *Weltweite Wissenschaft vom Volk: Volk – Welt – Erziehung, Johann Wilhelm Mannhardt zum 75. Geburtstag* (Vienna and Wiesbaden: Rohrer, 1958), p. 82.
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- ⁸⁵Rudolf Hilf, "Regionalismus – ein Beitrag zur Friedenssicherung", in Franz Hieronymus Riedl (ed.), *Menschenrechte – Volksgruppen – Regionalismus: Festgabe für Theodor Veiter zum 75. Geburtstag* (Vienna: Braumüller, 1982), p. 161.
- ⁸⁶Héraud, *Die Prinzipien*, op. cit., ref. 64, p. 51 and p. 53.
- ⁸⁷Peter Pernthaler, "Das Konzept des differenzierten Bundesstaates – Theoretische Grundlagen, praktische Konsequenzen und Anwendungsbereiche", in idem (ed.), *Neue Wege der Föderalismusreform* (Vienna: Braumüller, 1992), p. 118f.

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