States and Networks in the Formation of International Law

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STATES AND NETWORKS IN THE FORMATION OF INTERNATIONAL LAW

MORIA PAZ*

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CONCLUSION

INTRODUCTION

Our modern international legal regime recognizes two main classes of actors: states, characterized by territorial integrity and political independence; and the citizens of states, who, since 1948, have been bearers of direct rights of action in the international realm. This regime consolidates the experience of the individual into the exercise of legal entitlements within the framework of the state, and vests the political authority of a collectivity in its ability to establish exclusive physical occupation of land (self-determination). Where does this construction leave cross-border ethnic and/or religious networks that are explicitly political, but that do not pursue their agenda through either the mechanism of individual human rights or the drive for independent territory? International law lacks an intermediate legal form to recognize such collectivities, and therefore does not offer the structures and concepts needed to grasp and formally interact with them.

Indeed, how are we to understand a group of persons who make claims on the grounds of their nationality, and ask for certain nationally-based collective cultural or political rights, but reject the conflation of nationality with the state and are uninterested in territory or citizenship? Sayyid Qutb, the Egyptian educator and intellectual godfather of the Islamists and Al Qaeda, wrote that “a Muslim has no nationality except his belief.” He writes with disdain about “the nationality determined by a government” or “the flag of a country,” exhorting his followers instead to “live[] [in] . . . and defend[] . . . the homeland of the Muslim,” which, in fact, “is not a piece of land.” Similarly, Rabbi Samson Raphael Hirsch, one of the fathers of Jewish Neo-Orthodoxy, wrote that the Jews are a “people

1. The intermediate status of “minority” has uncertain standing in international law, which this article addresses to some depth.
3. Id.; see also Sayed Khatab, Arabism and Islamism in Sayyid Qutb’s Thought on Nationalism, 94 THE MUSLIM WORLD 217, 217-20 (2004) (asserting that, in addition to his philosophical ideas, Sayyid Qutb’s nationalism centers on “religio-political” concepts, including “sovereignty,” “servitude [to Allah],” and the “universalism of Islam,” to provide the necessary link).
transformed into a Nation through the Torah [the ‘instructions’ of the Hebrew bible] and for the Torah.... This people had become a nation before it possessed land and state....” Jews following this view do not speak the language of legal rights but that of obligations, and they hold a collective duty “to preserve the teachings of the Torah” above all else. What is the political import of nationalism institutionalized around a religious text or other “cultural” institution, rather than territorial governing bodies? Similar questions arise in considering a range of ethnic and/or religious groups whose internal loyalties may supersede allegiance to any territorial states of residence. What is the relationship between a national minority and a transnational ethnic-religious network? What legal categories are we to use to understand the Kurds, the Roma, or the Amish? For example, individual Kurds have access to international legal mechanisms that protect human rights, and the Kurdish region of Iraq—or of Turkey or Iran—may be granted some measure of political or cultural autonomy within the state. But, to the extent that Kurdish linguistic or ethnic identity transcends these borders, the only way forward on the international legal plane is to seek statehood. Meanwhile, many of the grievances of the Kurdish people as a whole do not translate well into individual rights claims, and the focus on individual rights may work to obscure the systematic harm to the collectivity and to depoliticize the group.

This article traces the legal developments and political history that brought us to this state of confusion. It does so by telling two separate, but interwoven, stories. First, it explores the political potential of the cross-border network form of organization through a detailed analysis of one network—the Alliance Israélite Universelle—that flourished between 1860 and 1920. This particular group utilized a far-flung network of private schools to organize its ethnic/religious political self. This part of the article offers a descriptive analysis of how transnational private-religious schools can form the institutional basis of a political practice, and investigate the complicated ways in which this political form interacted with state governing structures across time and space.

5. Id. at 503.
Second, this article examines the consolidation of the state-based legal system at the conclusion of World War I, exploring the processes through which statesmen, international lawyers, scholars, and judges mobilized the language and power of the law to enshrine the state as the only legitimate form of collectivized political power, thereby excluding ethnic or religious networks from formal participation in the new global system and, indeed, from the consciousness of international law as a discipline. The two stories merge in a surprising way, as the Alliance Israélite Universelle, studied in the first part of this article, paradoxically played an important role in the lawmaking processes described in the second part.

This article investigates, in particular, the legal category of the "minority" as a group with special protections for the maintenance of a separate collective cultural identity within the state frame. This construction emerged at the Paris Peace Conference at the end of World War I and was systematized by the Permanent Court of International Justice in the inter-war period. The structure of a "minority" was primarily intended as a means of stabilizing the new states of Eastern Europe, whose borders did not conform precisely to ethnic and national distributions. After World War II, this poorly defined legal category was largely abandoned, both in practice and in legal scholarship, in favor of individual human rights, but it returned to prominence in the 1990s following the breakup of the Soviet Union and later of Yugoslavia. It is the closest international law has come to establishing a legal category that might provide a mechanism for understanding and interacting with dispersed ethnic/religious networks as political entities, and indeed it was initially adopted in the "Minorities Treaties"—the name given to the

series of post-World War I agreements that codified certain rights for minorities—in part because of aggressive lobbying by the Alliance Israélite Universelle. I suggest that the way in which minorities were brought into public international law in 1919 was hardly an unalloyed triumph for minority interests. These treaties purposefully denied minority groups political or legal standing in international forums, and they undermined the de facto standing that independent transnational political collectivities had enjoyed under international law prior to 1919. The Minorities system was predicated on the same assumptions underlying the territorial state system, and ultimately was concerned primarily with those minorities that might foment a separatist national movement or harbor loyalty to an outside state. Because the Treaties and the Permanent Court set forth “minority” as an autonomous cultural status placed within the state frame, which thus veiled it from the prerogative of international law, neither the Treaties nor the Court engaged with the possibility of cross-border networks having an independent political stance.

The Alliance Israélite Universelle (“Alliance”) is a Jewish group that completely rejected the idea of a Jewish state and instead explicitly sought to create a transnational network organization.\(^7\) The French Jewish founders of the Alliance entertained no territorial aspirations and were virulent foes of political Zionism, the modern Jewish movement for territorial autonomy. Instead, the Alliance sought to wield political power through a cross-border network of private education.\(^8\) The group reached the apex of its operations and political influence in the period between 1880 and 1920, when it operated a vast network of Jewish schools in communities spread across fifteen territories in three continents. A study of the Alliance is valuable for understanding both the operation of schooling


networks and the political functions of ethnic/religious networks in general, not only because it vividly demonstrates the way in which a people can use private education across borders to practice a collective political life outside statism, but also because the history of the group is intertwined with the international legal developments that ultimately marginalized networks and that underlie our current state-based system of international law.

This article advances five arguments on the relationship between states, minority networks, and international law.

First, it suggests that, under certain circumstances, the (transnational) network, like the (territorial) state, can offer a strategic structure for organizing the public political identity of an ethnic-religious group. This work descriptively analyzes how the Alliance institutionalized its political identity through its schools, and how it supplied its members with many of the services that are today associated only or mainly with the welfare state. These included: (i) identifying shared interests and making centralized decisions on the allocation and deployment of resources to meet them (in the areas of education, medical care, economic restructuring, food distribution, sanitation, and the like); (ii) providing representative capacities whose legitimacy was accepted both inside and outside the collectivity; and (iii) generating relatively cohesive patterns of identity by means of which a community both understands itself and presents itself to others. This type of network is explicitly institutionalized as a political force and is stronger than a mere ethnic or religious affinity. This article focuses on education as a means of constructing the network identity. There is considerable existing literature on the political nature of schooling in support of state power; that is, state use of educational control to inculcate civil responsibilities and to cultivate the values and loyalties necessary for participation in the political process.\(^9\) Indeed, the U.S. Supreme Court in *Brown v. Board of Education* identified the role of public schools in teaching the “foundation of good citizenship” and as one

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of the state’s “most basic public responsibilities.” This article shows how, in a similar way, an ethnic and/or religious people can mobilize private education to negotiate a non-territorially bounded political space that deliberately transcends state power and instills new patterns of political consciousness.

Second, this work seeks to challenge two specific presuppositions of contemporary legal scholarship on networks. It suggests that scholars have failed to properly historicize networks; existing literature tends to date the rise of networks to the end of the Cold War, seeing their emergence as a consequence of the end of the bipolar state system. I argue that these scholars neglect the fact that forms of governance networks have been with us since at least the end of the nineteenth century. Further, it claims that this ahistorical approach has led network scholars to an overly simplistic analysis of the relationships between networks and states, and to an excessively narrow understanding of the capacity of networks to provide human organization. Researchers of networks share the fundamental assumption that network power comes solely at the expense of state power. Whether they are celebrating the advent of authorized government networks or fearing the destabilizing force of networks of violent extremists, these scholars generally agree that the increasing role of networks is an indicator of weaker state control. This historical study, however, demonstrates a more complex interaction, in which the state and the network can both compete with

12. This article tells the story of networks in the context of the modern nation-state system. This is not to suggest, however, that entities similar to the networks discussed herein did not operate before the rise of the modern state.
13. See, e.g., Anne-Marie Slaughter, Governing the Global Economy Through Government Networks, in The Role of Law in International Politics: Essays in International Relations and International Law 177, 177-78 (Michael Byers ed., 2000) (writing about “the disaggregated State that comes in place of the mythical unitary State”).
and support each other—and may emerge ultimately as interdependent. Moreover, many contemporary scholars, despite focusing on our “networked world order,” do not consider the role that networks can play as an alternative to the (territorial) state as the embodiment of a people’s national-political identity and its agent of political action.\textsuperscript{14} Networks are typically envisioned as conduits for the transborder movement of ideas, capital, goods, or people, and not as tied to core questions of identity and the fundamental organization of human community. Yet, this work suggests that at the beginning of the twentieth century, likely continuing through today, the network mode provided ethnic and/or religious communities a potent transnational form of political power and satisfied national or semi-national aspirations without the need for physical territory.

Third, and at odds with the view that only nation-states figure centrally in the formulation of international law,\textsuperscript{15} this article introduces the role played by the Alliance in the development of our modern international legal and political institutions, particularly those that protect human rights. It concentrates on the group’s lawmaking successes during the codification of the Minorities Treaties at the Paris Peace Conference (1919). This contribution to international lawmaking by a cross-border network forces us to revise our understanding of the history of the discourse.\textsuperscript{16}

Fourth, this work argues that modern international law played a decisive role in sanctioning certain political forms while marginalizing others. It identifies the Paris Peace Conference at the


\textsuperscript{16} In general, human rights law is seen as emerging after World War II. See, e.g., Makau Wa Mutua, \textit{Politics and Human Rights: An Essential Symbiosis, in THE ROLE OF LAW IN INTERNATIONAL POLITICS: ESSAYS IN INTERNATIONAL RELATIONS AND INTERNATIONAL LAW} 149, 149-179 (Michael Byers ed., 2000) (discussing the development of human rights and its similarity to the Western liberal democracy).
conclusion of World War I, and in particular the dual scheme of self-determination (as legalized in the Peace Treaty) and minority rights (the Minorities Treaties), as the critical point in suppressing the network form and denying it legal meaning and political status. The legal language employed in 1919 forms the foundation of our present conceptual system, and leaves us today without the necessary tools and vocabulary to understand transnational ethnic/religious networks as political entities or to imagine how these groups might be integrated into the formal legal system. International law worked to mask what was essentially a political bargain at the time, one that was designed to secure territorial stability and resolve the problem of self-determination, and one that was engineered between historically situated people: statesmen, international lawyers, and experts. The state form existed long before 1919, but until then it was only one out of many competing political structures for organizing collective identity. It was, in part, through the lawmaking that followed the end of World War I that states were anointed as the only legitimate form of political organization and the only recognized legal entity. The state system was not a fait accompli, but instead emerged to some extent as a result of the legal discourse of the time. This historical analysis suggests that the common dictum that “states make the law” is too simplistic. The converse is also true: the law helped to make the modern state. This article attempts to recapture the political, cultural, and social contexts of these developments, and

17. There are many different birth dates for the modern state—inter alia, 1648 and the Treaty of Westphalia, the eighteenth century with its innovations in western political theories, and the American and French Revolutions.  
18. Other forms of political organization include, for example, empires and tribes. Indeed, even as late as 1918, in the aftermath of World War I, the survival of the Dual Monarchy was seen as a European “necessity.” See Nathaniel Berman, *Modernism, Nationalism, and the Rhetoric of Reconstruction*, in *Law and Moral Action in World Politics* 108, 109-10 (Cecilia Lynch & Michael Loriaux eds., 2000) (discussing cultural Modernism and the changes in international law between World Wars I and II and concluding that changes in legal thought were partly responsible for deep shifts in Western cultural history); see also Jane Burbank & Fredrick Cooper, *Empires in World History: Power and the Politics of Difference* 8-10 (2010) (defining the empire as a large political unit).  
uncover their limits and consequences.

Fifth, I argue that the way in which the regime of minority rights was institutionalized during the inter-war period left international law without the capability to engage with ethnic and/or religious entities outside the framework of the state, and avoided addressing critical issues of minority-state conflict. This article explores a series of decisions of the Permanent Court of International Justice (PCIJ) to demonstrate how the court implemented the new regime for the protection of minorities, with a particular focus on decisions dealing with minority schools. The case law assumed an idealized static coexistence between the minority and the majority as two culturally separate entities that were unified within a single larger territorial-political frame. The existing decisions therefore provide us with no guidelines for the resolution of conflicts between the minority and the state. In the realm of education, the court guaranteed a minority right to separate private schools but remained silent on the degree of independence from state regulation that the schools should enjoy. The Minorities era offers no precedents about limits on the right of the minority to advocate in its schools an identity or political agenda that diverges from state interests, or on the right of the state to dictate regulations that force national assimilation.

In advancing these claims, this work builds on Professor Robert Cover’s interpretation of the law in “Nomos and Narrative.” Cover argued that “no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning.” This article seeks to apply Cover’s interpretation of the legal tradition to international law, advancing the role of law not only in managing the international order, but also in understanding it: the law provides meaning and generates narratives that allow us to make sense of certain political forms but not others. This work traces the ways in which our international legal system developed in the inter-war period, and claims that the law established a lexicon of political action revolving around (territorial) statehood that denied meaning and purpose to transnational networks. The result was to construe states as the accepted form of political behavior while casting the

21. Id. at 4.
network as politically deviant.

Part I of this article provides an in-depth analysis of the Alliance. It describes how, working through their schools, the Alliance was able to institute a new Jewish public political order that spanned multiple lands across the Muslim world. It also explores the complex relationships between this network and different states and proto-states, concluding that the network/state relationship is unstable across space and may be inherently unpredictable over time. Part II analyzes the Minorities Treaties and the marginalization of network entities in the aftermath of World War I. It also surveys a number of legal decisions of the Permanent Court of International Justice in the 1920s and 1930s to evaluate how the new legal regime for the protection of minorities was implemented, focusing in particular on cases dealing with minority schools. Finally, Part III returns to the Alliance to examine the decline of the network in the state-centered regime that emerged after the war. It analyzes the specific national laws that ultimately made the Alliance project impossible in one exemplary location: the Ottoman Empire at the moment of its transition to the Republic of Turkey. Part III also discuss the political defeat of the Alliance within the Jewish community by the statist movement for political Zionism. The article concludes with some reflections on where this legal trajectory leaves us today in dealing with ethnic/religious networks and minority religious educational institutions, and on the capacity of international law to mediate essentially political state/network disputes.

I. THE ALLIANCE

A. STRUCTURING AN ETHNIC/RELIGIOUS NETWORK IDENTITY

The Alliance was founded in Paris in 1860, and over the following decades the group built and operated an extensive network of Jewish schools across North Africa, the Middle East, the Ottoman Empire, and the Balkans. The first was founded in Morocco in


1862; by 1914, there were hundreds of Alliance-run schools with tens of thousands of students in what are today Morocco, Algeria, Tunisia, Libya, Egypt, Israel, Syria, Lebanon, Iraq, Iran, Turkey, Romania, Bulgaria, Greece, Slovenia, Macedonia, Croatia, Serbia and Montenegro, and Bosnia.\textsuperscript{24} Between 1880 and 1914, the Alliance’s infrastructure came to constitute almost a surrogate Jewish community: as one school director in Palestine put it, “[t]he school became the community, and the community the school.”\textsuperscript{25}

In most places, the Alliance schools were the only local institutions providing Jewish mass education, having either replaced the traditional schools or altered them beyond recognition.\textsuperscript{26} The curriculum was borrowed from the French secular school system and instruction was conducted in French, putting the Eastern Jewish communities in direct touch with the Western world.\textsuperscript{27} In Muslim lands, Alliance schools were the first to introduce secular education, they were the only schools open to Jewish girls, and they were the only schools providing evening classes for adults lacking any prior education.\textsuperscript{28} The network covered the educational ground from preschool classes through nursery, primary, and secondary school; it sponsored and ran vocational schools and agricultural schools, offered extensive apprentice training including workshops for women, and operated religious schools (including rabbinical seminaries).\textsuperscript{29} Its alumni societies were responsible for multiple institutions ranging from hospitals to book clubs.\textsuperscript{30}
In bad times, the Alliance teachers organized a communal response to meet catastrophes. The schools distributed emergency relief supplies such as food, medicine, and blankets, and provided shelter when necessary.\textsuperscript{31} School directors provided medical services in areas where there were few qualified physicians and even fewer hospitals. They vaccinated Jewish populations against various diseases prevalent in particular areas (such as smallpox in Tetuan and typhus in Rabbat).\textsuperscript{32} The Alliance fed and clothed young Jews.\textsuperscript{33} During crises like the 1904 famine in Morocco, the food provided in Alliance schools was often the only warm meal a Jewish youth would eat all day.\textsuperscript{34}

In peaceful times, the Alliance organized alumni societies, which provided free health-care centers for the poor, hospitals, food distribution, mutual loan societies, summer camps, evening classes to teach European languages to the poor, and lectures designed to instill Jewish solidarity and stimulate intellectual fervor.\textsuperscript{35} One Alliance school director was even credited with creating the "first post office line between Fez and Meknes, and one between Fez and Sefrou in the 1890s."\textsuperscript{36}

The effect of the Alliance's operations across the Islamic world was dramatic. The combined impact of secular education, new linguistic skills, training in a wide range of occupations, better health care, and stronger communal organization led to the emergence of a new Jewish middle class across the Muslim world. In the city of

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\textsuperscript{31} See Silberman, \textit{supra} note 23, at 185-86, 198.

\textsuperscript{32} See Laskier, \textit{supra} note 26, at 118 (highlighting the immunization programs in response to the epidemics in Tetuan and Rabbat).

\textsuperscript{33} See id. at 117-18.

\textsuperscript{34} See Silberman, \textit{supra} note 23, at 198; Michael Menachem Laskier, The Jewish Communities of Morocco and the Alliance Israelite Universelle: 1860-1956 236-37 (1979) (unpublished Ph.D. dissertation, University of California Los Angeles) (stating that due to the humanitarian efforts of the Alliance, the Deboud community did not succumb to starvation after a Berber attack that left many residents hungry and without shelter).

\textsuperscript{35} See Silberman, \textit{supra} note 23, at 197, 229 (describing certain alumni activities and the encouragement that alumni received from the Alliance whose main purpose was to succeed in creating food and clothing programs for the communities' poor); Laskier, \textit{supra} note 34, at 289, 655-661.

\textsuperscript{36} Laskier, \textit{supra} note 34, at 316.
Salonika, for example, which was 56% Jewish in the late nineteenth century, only a handful of Jewish residents had received modern education prior to the opening of the first Alliance school in 1873. But by 1910, thousands of Jews had graduated from the Alliance system, and nearly all of the Jewish clerks, merchants, artisans, doctors, lawyers, engineers, and journalists in the city had attended the network’s primary schools. In Baghdad, the new Jewish influence on commerce was so great that on Saturday and Jewish holidays, marketplaces were deserted and banks closed. In Syria, the local politicians reminded the Jews that the Alliance was responsible for their escape from insignificance. One Iranian Jewish leader perhaps best summed up the impact of the Alliance’s transnational network on Jews all across the Muslim world: “Once,” he declared, “God sent Moses to redeem the Jews. Now the Alliance Israélite Universelle has come to save us.”

The Alliance consciously organized the Jewish population into a network that cut across territorial boundaries: “a link,” declared its Manifesto, must be “created, a solidarity established, from country to country, from country to country.”


38. Silberman, supra note 23, at 218 (noting that thirty-five years later, there were thousands of Jewish residents in the community that had received education).

39. Id.; see also Paul Dumont, Jewish Communities in Turkey during the Last Decades of the Nineteenth-Century in Light of the Archives of the Alliance Israélite Universelle, in CHRISTIANS AND JEWS IN THE OTTOMAN EMPIRE 1, 209-42 (Benjamin Braude & Bernard Lewis eds., 1982) (providing extensive statistical data on the transformation of the Jews of the Ottoman Empire after the coming of the Alliance).

40. Tzvi Zohar, H Alliance bkhilot agan hayam ha-tichon b-sof h-meha h-yod-tet [Alliance in the Jewish Communities of the Mediterranean at the end of the 19th Century], in THE "ALLIANCE" COMMUNITIES IN THE MEDITERRANEAN, supra note 37, at 1, 1-35 (citing BULLETIN SEMESTRIEL DE L’ALLIANCE ISRAELITE UNIVERSELLE 109 (1913) [hereinafter BAIU]).

41. Silberman, supra note 23, at 212.

country, embracing in its network all that is Jewish.” As the Alliance Manifesto put it, this Jewish network corresponded to “neither a state, nor a society, nor a determinate territory.” Narcisse Leven, one of the prominent personalities who presided over the creation of the Alliance and the elaboration of its ideological platform, emphasized transnationalism as an organizing principle of the Jewish network: “A work like that of the Alliance cannot and should not be shut in the borders of one country.” S. Bloch, the editor of the Alliance Israélite, expressed the network’s complete rejection of Jewish territorial identity:

There is no such thing as geographical Judaism, that is, [a form of Judaism] confined to, and circumscribed by, certain countries, and influenced by certain local mores; but there is a cosmopolitan, universal, invariable, and independent entity called Judaism, above time, space, soil and races.

The founders of the Alliance consciously structured their transnational Jewish network as a political entity, or in the words of its founders, a “political force preoccupied with Jewish interests.” The content that the Alliance gave its network mirrored a territorial government. The Manifesto explained: “[A]ll other important faiths are represented in the world by nations—embodied, that is to say, in governments . . .” Because of their transnational existence, the Jewish people alone are left stripped of “th[e] important advantage” of having a government that has “a special interest and an official duty to represent and speak for them.” The Alliance appointed itself

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44. Id. at 254, 254 n.14 (quoting the “Manifeste de juillet 1860”).
47. Graetz, supra note 43, at 277, 277 n.80.
49. Id. at 485.
the "political force" to fill in the vacuum of "Jewish statelessness" and to perform the "official duty" of governing and caring for "all that is Israelite."  

This network format does not fit neatly into the familiar structures employed by contemporary scholars of international law and international relations. Existing literature generally divides networks into two main categories or types. The first type is made up of networks that operate in the private sphere, mainly the market and civil society, to address common problems across borders. These networks are usually based in a normative idea or collectively-shared special interest. Lacking explicit ties to state power, these groups do not have formal political capabilities of the kind recognized by international law. The second type is transgovernmental networks, by which state officials may exchange information and coordinate activity to combat global crime or address common problems on a global scale.

The Alliance defies categorization within this taxonomy. Rather, it adds a new type: the network as a vehicle for the political organization of ethnic-religious identity. Structurally, the Alliance, like a private network, was a voluntary, non-territorial agency operating across borders and linking many actors engaged in a common project. The group relied on the mechanisms of soft power (specifically, education) for ordering the members of its ethnic-

50. Silberman, supra note 23 at 51.


52. "Government networks" have been studied extensively by Anne-Marie Slaughter, who defines them as "networks of national government officials exchanging information, coordinating national policies and working together to address common problems." Slaughter, supra note 11, at 1041 (providing examples of: state officials operating across borders to address economic issues, security, and environmental concerns; judges exchanging decisions with one another; and legislators reaching across borders to standardize their laws and regulations).
religious community. But the Alliance also differed from contemporary private networks, which typically focus on a "specialized issue area" or cause.\textsuperscript{53} The Alliance was concerned with the interests and public order of Jews worldwide, an entire ethnic-religious people. In so doing, it sought a wider power than that available in the private realm of contracts and property.

In its attempt to achieve political capabilities and institute Jewish public order, the Alliance resembled today's transgovernmental networks, which arrogate to themselves certain functions taken from the state. But there is a marked difference here, too. Government networks work for their governments or other domestic political institutions, as a tool for coordinating action between and among states. They can therefore only emerge in the context of states and are ultimately intertwined with territorial power.\textsuperscript{54} The Alliance, by contrast, completely rejected the concept of a Jewish territorial state. Instead, it developed a distinct political structure of its own that operated outside any government's official legal framework.\textsuperscript{55}

Nor can the Alliance be neatly described in terms of the modern concept of the public/private divide,\textsuperscript{56} which splits the sphere of the public state from that of the market and private civil society.\textsuperscript{57} The

\textsuperscript{53} KECK \& SIKKINK, supra note 51, at 8.

\textsuperscript{54} Indeed the "genius" of government networks is "that they marry soft with hard power." ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 168 (2004).

\textsuperscript{55} See RODRIGUE, supra note 22, at 11-12 (noting that the Alliance established a formal relationship with the French government only after World War I and lacked a legal French status until 1975).

\textsuperscript{56} The public/private distinction has several connotations; here it is used within the liberal political tradition, the distinction between the state and civil society. See JOHN STUART MILL, ON LIBERTY 1 (A. Castell ed., 1947) (defending individual liberty and articulating corresponding limits on government interference). See generally KARL MARX, ON THE JEWISH QUESTION, reprinted in WRITINGS OF THE YOUNG MARX ON PHILOSOPHY AND SOCIETY 216 (L. Easton \& K. Guddat eds., 1967) (discussing the political emancipation of Jewish people in Germany's Christian state); Morton J. Horwitz, The History of the Public/Private Distinction, 130 U. PA. L. REV. 1423, 1423 (1982) (discussing the emergence of the public realm in various legal doctrines).

\textsuperscript{57} See MARX, supra note 56, at 216 (using "civil society" in the Marxian sense of a "private" civil society that is not the political state, as opposed to Hegel's use of "civil society" as an abstract universal that can mature into a state through education of civil life); see also Frances E. Olsen, The Family and the Market: A Study of Ideology and Legal Reform, 96 HARV. L. REV. 1497, 1498 n.16 (1983) (discussing the relationship between civil society and the political state).
Alliance was a private entity in that its institutional core was a system of private Jewish schools that operated outside state regulation and state finance. Enrollment at the schools was voluntary and not contingent on top-down law. In principle, a tuition fee was collected from the students. At the same time, however, the Alliance schools were also public in the sense that they were open to all on equal terms (both Jews and non-Jews), and that they took in all the students in the Jewish communities who sought admission, including those who could not afford the minimal tuition fee. Moreover, the schools were deliberately organized to provide much more than basic education. The Alliance used its educational network to define a political identity and instill a public order for the Jewish community spanning multiple lands. The explicit mission of the schools was civic—the Alliance taught Jewish youth to become active, engaged citizens, a classic function of state-run public schools. Indeed the U.S. Supreme Court has concluded that the role of public schools carry an overriding importance in sustaining the state's political and cultural heritage.

58. See Silberman, supra note 23, at 77 (noting that poorer students were granted free admission to Alliance schools).
59. See John Dewey, The Child and The Curriculum and "The School and Society" 6-29 (1957) (advocating for the socialization of children in schools); Kymlicka, supra note 9, at 293 ("It is widely accepted that a basic task of schooling is to prepare each new generation for their responsibilities as citizens. Indeed, the need to create a knowledgeable and responsible citizenry was one of the major reasons for establishing a public school system, and for making education mandatory."); Macedo, supra note 9, at 85 (noting that public schools were thought to be an institution critical for the establishment of political order); John C. Jeffries, Jr., & James E. Ryan, A Political History of the Establishment Clause, 100 Mich. L. Rev. 279, 316-318 (2001) (discussing the secularization of American schools as justified for the sake of national unity); James E. Ryan, Charter Schools and Public Education, 4 Stan. J. C.R. & C.L. 393, 405-06 (2008) (pointing out that, historically, the civic and socializing missions of public schools were as important as the academic mission). See generally Dewey, supra note 9 (providing some of the most influential theory about education and the role of schools in guiding experiences of children and fostering in them the capacity to contribute to society).
60. Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954) (noting that education is one of the most important functions of the state and is also an important component of a democratic society).
B. THE COMPLEX IDEOLOGY OF THE ETHNIC-RELIGIOUS NETWORK

The Alliance explicitly involved its schools in creating a new and lasting way of being Jewish. The group declared “we want to form men: that, in a few words, is what our program is all about.” The “new Jew” molded by the Alliance had dual loyalties. First, the Alliance used its schooling system to instill in the Jews of the Muslim world ties of “solidarity,” and to generate genuine, meaningful political participation and cultural links among all Jews. Solidarity among all Jews worldwide was a central goal of the Alliance. This is reflected in the motto of the Alliance: “all Israelites are responsible to each other.” The vocabulary of obligation among world Jews transcended any geographically based identity and included two specific legal and political requirements: to defend individual oppressed Jews and to protect against general attacks on Judaism.

Second, the Alliance used its schools to train the Jews in the mores and obligations of citizenship in a nation-state structure, and to cultivate the values and knowledge necessary for participation in the larger political process. The founders of the Alliance sought to duplicate through their schools the path to citizenship that they themselves had traveled in France. The French State had


62. See Silberman, supra note 23, at 65-67 (discussing the Alliance’s belief that the education of girls was especially important to maintain Jewish solidarity in Muslim countries because education was one of the only means for girls to combat the social inferiority of women in Muslim countries, and because education would ultimately make women more effective in providing spiritual and intellectual guidance for their children).

63. Id. at 50 (noting that the “Universelle” portion of the Alliance’s title came about due to the yearning for worldwide solidarity among Jews).

64. See id. at 83. The Alliance’s Appeal also declared that all Jews are “are brothers.”

65. See id. at 51 (listing one of the Alliance’s original aims as “to lead effective aid to those who are made to suffer because of their Judaism”).

66. One of the founders and Presidents of the Alliance reflected this sensibility: Everyone can appreciate the benefits resulting from the emancipation of the Jews of France. Once they formed a foreign population . . . now they are devoted citizens, loving and serving their country . . . . This state of the Jews, exceptional and proper to
emancipated its Jews following the Revolution and granted them citizenship. Furthermore, France put in place a public school system to prepare young people (including Jews) for their responsibilities as citizens and to instill loyalty to the French Republic. The Alliance schools, taking their cue from the French model, trained world Jewry in the responsibilities of citizenship and inculcated loyalty to state power. The Alliance was less concerned with "producing half-learned men than in forming good and tolerant men who feel an attachment to their duties as citizens and as Jews, who are dedicated to the public good and to their brothers ...".

These two explicit objectives of the Alliance educational network describe two symbolic systems for Jewish political existence that were in a dialectical tension with each other. The first conceptual system is that of public political Jewish solidarity. This system imagined Jewish liberation as the flourishing of a sovereign Jewish entity cutting across territorial boundaries. It depicted the Jewish community as a single political and cultural entity based on the logic of absolute identity. A unifying presumption situates the Jews in an active obligatory relation to one another and belonging to an autonomous public self that exists outside the formation of the territorial state.

The second conceptual system, that of state citizenship, was based on the principles of the 1789 French Revolution. It maps Jewish liberation as equality; this equality is structured in terms of a relationship, or a legal bond, between citizens, as individual right holders, and the state that implements these rights. Defining Jews

[those of] France only, will become their normal state amongst all the people. RODRIGUE, supra note 61, at 24 (quoting Jules Carvallo, one of the founders of the Alliance and its President, from two appeals published in Archives Israélite in 1851 and 1853 for the creation of an international Jewish congress).


68. See generally EUGEN WEBER, PEASANTS INTO FRENCHMEN: THE MODERNIZATION OF RURAL FRANCE 1870-1914 303-339 (1976) (discussing France's efforts to use education to turn the masses into Frenchmen).

69. RODRIGUE, supra note 61, at 73.

70. See generally RODRIGUE, supra note 22, at 8.

71. See id. (laying out the path to emancipation, which included abandoning certain habits and striving to become enlightened citizens worthy of emancipation).
by citizenship, not by their religious or ethnic group, configures the problems facing world Jews in modern political terms, imagines the solutions in legal terms, and consolidates the experience of the individual Jew into the exercise of legal entitlements. The relevant participants are the state and the individual Jew as an abstract citizen in the public realm, who may be Jewish only in the private realm. The vocabulary of this system is that of equal rights and participation within the state, not that of obligations spanning national boundaries. This system downgrades religion, the locus of transnational public political Jewish solidarity, to the private commitments of free men in civil society, while placing the territorial state at the center of the emancipatory process. Jewish solidarity disappears from view in the public realm.

The Alliance always held strong to both sides of its Jewish political identity, despite the inherent tensions in embracing both a particular Jewish political agenda and a liberal universalist outlook. Narcisse Leven, one of the founders of the Alliance, explained: “We would like to proclaim that [our works] do not serve civilization any less than Judaism.” “We are bound,” proclaimed the Alliance,

[t]o protect the hereditary characteristics of our past, as an integral part of human patrimony that our forbearers delegated to us and that we have to transmit: to give to nations of citizens, tightly united, but conscious of their origin, instructed in the obligations of solidarity that universal opinion imposes, resolved to accept those obligations in a spirit of fraternity.

The Alliance was able to sustain its two seemingly oppositional discourses of Jewish identity because the network operated in many geographical settings simultaneously. In each territory, the Alliance educational system prioritized one form of being Jewish and submerged the other. To demonstrate this point, below is an

72. See, e.g., MARX, supra note 56, at 216.
73. WEILL, supra note 45, at 61.
74. Id. at 97.
75. In arguing that the Alliance achieved flexibility by building its ideology around a dialectical tension between two systems for being Jewish, this work benefits from Janet Halley’s definition of “binary identities.” Halley explains the nature of binary identities:

[A] double bind involves a systematic arrangement of symbolic systems with at least three characteristics. First, two conceptual systems (or “discourses”) are matched in
examination of Alliance operations across four different territories: Morocco, the Ottoman Empire, Algeria, and France.

The Alliance opened its first school in Morocco in 1862.76 When the network first arrived in Morocco, official power was still in the hands of the Sultan although the Kingdom was increasingly influenced by Western powers fighting for a foothold.77 The Jewish network expected the French presence in Morocco to be long-lasting, and publicly and politically linked the fate of native Jews to France. The Alliance explicitly designated its schools to “serve France” and to form out of the Jewish youth “dedicated citizens for her future, citizens who would help maintain French ascendancy in this country.”78 The schools oriented the Jews to France as their “intellectual homeland” and "their adopted homeland.”79 At the same time, the Alliance education deliberately distanced the Jewish community from the civil and political institutions of the surrounding Muslim majority. The Alliance school director in Morocco explained that in the Kingdom, where the spirit of revolt and independence is strong, France should be able “to look for support to the educated and completely liberated Jewish population.”80

The Ottoman Empire was another principal area of Alliance operations.81 In the Empire, the Alliance operated under the millet...
framework of organization, where the Muslim rulers remained outside the cultural realm of non-Muslims and so did not interfere in the education of Jews and Christians. Here, as in Morocco, the Alliance sought to prepare Jews for their roles as individual citizens. But, unlike in Morocco, in the Ottoman Empire the Alliance felt the existing territorial ruler offered the best hope for a liberal or quasi-liberal order. As a result, the Alliance schools did not teach loyalty to France but instead sought to prepare Jews to be Ottoman citizens and fostered genuine “devotion and affection for Turkey.” In order to mold Jews as “patriotic citizens” committed to the “great endeavor to make the empire glorious again,” the Alliance taught the Turkish language in its schools and aided the assimilation of the Jews into the external Muslim society. The schools also encouraged students to join the Turkish army as part of their duty as citizens.

While in Morocco and the Ottoman Empire, the Alliance subordinated religious particularity to citizenship and participation in the external political order, in Algeria the network did the opposite. The Alliance arrived in Algeria relatively late. Algeria was a French colonial territory considered a province of the mother country—“as much a part of France as the Département de la Seine,” and starting in 1870 Algerian Jews were made French citizens. Because the Jews had already obtained French citizenship, the Alliance did not

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EMANCIPATION: JEWS, STATES, AND CITIZENSHIP, supra note 67, at 248, 250 (noting that by 1914, each Turkish community had an Alliance school).

82. See Kemal H. Karpat, Millets and Nationality: The Roots of the Incongruity of Nation and State in the Post-Ottoman Era, in CHRISTIANS AND JEWS IN THE OTTOMAN EMPIRE 142 (Benjamin Braude & Bernard Lewis eds., 1982) (providing more detail on the millet system).

83. Dan A. Porat, The Nation Revised: Teaching the Jewish Past in the Zionist Present (1890–1913), 13 JEWISH SOC. STUD. 59, 63-64 (2006) (noting the strategy of emancipation and social integration used in the Ottoman Empire and contrasting this strategy against the insular Jewish communities of the Middle East and North Africa).

84. RODRIGUE, supra note 61, at 125.

85. RODRIGUE, supra note 22, at 279.


87. RODRIGUE, supra note 61, at 141.


89. Schroeter & Chetrit, supra note 77, at 175 (mentioning the naturalization of Algerian Jews as French citizens through issue of the Crémieux Decree of 1870).
think that Algeria should be part of its sphere of activity: "Was not that country a French territory; had not our fellow Jews been, in 1870, granted the honorable status of citizens of the Republic?" The director of the Alliance explained that the work of the Alliance in Algeria "owes its origins to the emotions aroused among world Jewry by the anti-Semitic outbreaks of 1898." These atrocious pogroms were organized by immigrants from France determined to "water the tree of our liberty with Jewish blood." In reaction to the violence of French newcomers and the inaction of the French government when native Jews were "hunted down and beaten like animals," and in response to the simultaneous election of Edouard Drumont, the foremost Jew-baiter in France, as the deputy elected to parliament from Algeria, the Alliance decided to establish its first schools in Algeria. These schools did not provide a secular French curriculum but instead emphasized Jewish solidarity, encouraging the students to "cling" to their "eternal and immutable past and heritage." Providing a narrower, more concrete definition of Jewish political identity entailed a partial Jewish withdrawal from secular French patterns. The Alliance opened a network of private afternoon Jewish religious schools, called Talmudei Torah (the traditional name for Jewish religious schools) and the education imparted there inculcated specific Jewish cultural practices, ideas, structures, and rituals. The curriculum included "reading and writing in Hebrew, translation of prayers and the Bible, fundamentals of grammar, Biblical and post-Biblical Jewish history, and a study of the ethical practices, religious duties, and holidays of the Jews."

The Alliance did not have any schools within France itself. There, as in Algeria, the Jews already enjoyed equal political rights as citizens. The network left the state to train Jewish youth in the mores and obligations of citizenship. Within France, its birthplace and

90. RODRIGUE, supra note 22, at 107-110 (quoting M. Nahom, Annual Report, Archives of the AIU, France VII.F.13).
91. Id. at 107-110.
93. RODRIGUE, supra note 22, at 107-110.
94. Id. at 107-110.
headquarters, the Alliance divested itself of any political content and the organization instead resembled a private voluntary association "like the Solidarité Républicaine and Masonic Lodges," whose operations focused on soliciting membership, collecting dues and raising funds.96

The Alliance sustained its seemingly contradictory system of political identity by using its educational network to emphasize in each territory of its operations across the Islamic world only one system of its complex pattern of Jewish identity. The Alliance decided which system to prioritize and which to ignore based on both the nature of French power and interests and the characteristics of the governing structures in each territory across its wide sphere of operations. Thus, although the Alliance purposely opted for the transnational form of organizing Jewish identity and deliberately rejected territorial structures, the Jewish network always maintained an ambivalent relationship to territoriality. Since the Alliance privileged only one side of its complex identity in each territory, the group achieved coherence only in the transnational realm. To sustain its Jewish transnational political organization, the Alliance always had to operate simultaneously across multiple territorial boundaries.

C. THE STATE AND THE NETWORK: UNPREDICTABLE RELATIONSHIPS

Both the French state and the Zionist national movement (a proto-state) had complex interactions with the transnational form of the Alliance. First, supportive: These state projects used the network, among other entities, as a tool to build and disseminate their particular national identity.97 Second, competitive: In promoting an opportunity for independent identity formation, the network stood in direct competition and conflict with the territorial identities fostered

97. Compare JAMES COOKE, NEW FRENCH IMPERIALISM, 1880-1910: THE THIRD REPUBLIC AND THE COLONIAL EXPANSION 19-20 (1937) (explaining how France saw imperialism, particularly with the Alliance, as a way of spreading their culture and ideas), with Rallying the Forces of Opposition (Sept. 1903), in IB THE LETTERS AND PAPERS OF CHAIM WEIZMANN 35, 38 (Barnet Litvinof ed., 1983) (highlighting how the Zionist movement intended on collaborating with the Alliance to further the “purity of the Zionist idea”).
by France and by the Zionists.\textsuperscript{98} The interplay between these three institutions reveals a rich dynamic in which they supported and challenged each other at the same time,\textsuperscript{99} demonstrating that the relationship between the transnational and the territorial is remarkably fluid and results in outcomes that are unpredictable over time.

1. The Alliance and France

French national identity, as embodied in the principles of the Revolution, included not only a particular loyalty to the ethnic, territorial, and cultural background of France, but also a conviction that French values represented the common morals of all mankind.\textsuperscript{100} France sought continuously to spread its own culture, tongue, and ideas outside the confines of its own territorial boundaries. To do this, France built upon various transnational networks, one of which was the Alliance.

The Alliance spread and circulated French values, language, and way of life among the Jews—an important segment of native populations across the Islamic East.

Morocco provides an example of the ways in which the Alliance helped France to spread the centrality of its culture and orient populations toward France. France, already in control of Algeria, had a “special interest” in the Moroccan Kingdom as the geographical and economic prolongation of Oran, a city located in Northwestern Algeria. But Morocco lacked indigenous Christian communities, the

\textsuperscript{98} Compare LASKIER, supra note 26, at 156 (noting the Alliance’s “anger and dismay” at the opening of French schools in Morocco), with 2 THEODOR HERZL, ZIONIST WRITINGS: ESSAYS AND ADDRESSES 110 (Harry Zohn trans., 1973) (conveying the Zionist sentiment that no group did more harm compared to the good that it could have done than the “pompous” Alliance).


\textsuperscript{100} See COOKE, supra note 97, at 20 (1937) (quoting the French politician Jean Jaures, who said, “France’s mission was to spread the Gospel of French culture, liberalism, and egalitarianism: the principles of 1789”).
traditional ally of French powers in their forced opening of Eastern territories, and French missionaries proved unsuccessful in converting the Muslim masses. The Alliance provided France with an opening into Morocco at a moment of intense colonial competition with other European powers.

In 1902, before France established its colonial rule over Morocco, the French Minister Plenipotentiary in Tangier, G. Saint René Taillandier, wrote of the Alliance's value to France. Taillandier noted that the graduates of the Alliance constituted the only segment of the indigenous population in Morocco that spoke French, and they acted as the chief intermediary between Morocco and Europe. Taillandier reasoned that France "[m]ust continue to regard with utmost sympathy the activities of the Alliance, hoping that its schools advance French culture among the Jews." If successful in this endeavor, Taillandier predicted that the Jewish network might bring "a stunning victory" to France and help France in diminishing the influence of Spain and England over Morocco. A few years later, after the signing of the Treaty of Fez (1912) giving sovereignty over the North and the Reif Mountains in Morocco to France, Eugène Regnault, the French Minister in Morocco, praised the leading role of the Alliance in helping France to establish its colonial rule by spreading the "radiance of French language and culture among the indigenous people of Morocco."

At the same time that the Alliance played an important role in supporting the success of the French national project, the group also directly competed with French power. The Alliance was founded in the first place as an act of defiance by French Jews against their state. The organization was born in reaction to the Damascus Affair (1840), when the Jewish community of Syria was blamed for the disappearance of a monk and his servant in the busy streets of Damascus. More than anyone else, the French Consul in

101. See Laskier, supra note 34, at 121 (stating that at the time, the Jews, several of whom were Alliance graduates, were the only indigenous French speaking population in Morocco and were key to the French becoming involved in commercial circles within Morocco).
102. Id. at 121.
103. Id. at 121-22.
104. Id. at 123.
105. See S. Posener, Adolphe Crémieux: A Biography 89 (Eugene Golob
Damascus, an agent of the Republic, was responsible for pushing forward the affair. The Consul was backed by the French Foreign Minister, Louis Adolphe Thiers, who gathered, as he publicly explained, the "courage" to "protect his representative" against the Jewish "attack." In support of his Consul, Thiers announced during a parliamentary debate that there was a gap between the interests of France and its Jews. Abandoned by the state, French Jews united with Jews outside France to resist the allegations. They met in England—then on the brink of war with France—to establish an organized Jewish collective political force to address the Damascus Affair.

In London, Adolphe Crémieux, the soon-to-become President of the Alliance, summed up the rationale for the establishment of the new Jewish network: "France is against us."

Inside France, moreover, the Alliance created room for French Jews to identify, politically and publicly, with an entity other than the French state: a broader non-territorial Jewish sovereign. Outside France, too, the Alliance eventually confronted French power in each colony, either directly or indirectly through its students. North Africa provides an example. In Algeria, as discussed earlier, the Alliance religious schools were deliberately designed to generate in the youth of the community an affiliation with a Jewish transnational sovereignty and distance from France as their primary locus of allegiance. In Morocco, friction emerged when France opened its own state-run Franco-Israélite schools, intending to replace the


107. POSENER, supra note 105, at 105.

108. Louis Adolphe Thiers: “You make an appeal on behalf of Jews; well, then, I make an appeal on behalf of a Frenchmen . . . . It requires courage for a minister to protect his representative under such attack.” See id. at 104-06 (“Thus the [post-Damascus Affair] situation became clear. One could no longer count on the intervention of the French . . . . Thiers was engaged in an adventurous policy in the Near East . . . . and did not wish to disavow his representative at Damascus.”).

109. See id. at 106 (explaining a public meeting between Sir Moses Montefiore, Crémieux, and the English Viceroy, in which a resolution between the French Jews and the English was approved).

110. Id. at 106.
Alliance schools.\textsuperscript{111} The Alliance refused to close its schools and, ultimately, France ceded control of the Franco-Israélite schools to the Alliance, committing itself to providing financial subsidies for the entire Alliance educational network in the Mediterranean Basin.\textsuperscript{112}

In Tunisia, the students of the Alliance in their individual capacities began to oppose French colonial rule. One example is Albert Memmi, born to a very poor Jewish family in the ghetto of Tunisia and educated in the Alliance school system. Memmi went on to graduate from the Sorbonne and become a prominent French writer and an eminent Professor of Sociology. His writings, in particular his 1957 work \textit{The Colonizer and the Colonized}, served as the voice of the Tunisian national movement. "The colonial condition," he wrote, "cannot be adjusted to; like an iron collar, it can only be broken."\textsuperscript{113}

2. \textit{The Alliance and Zionism}

Both the Alliance and the Zionists set out to create the new "Jewish man." The new Jew as conceived by the Alliance comported with two simultaneous systems of identity: a citizen of his state of residence and a part of a transnational Jewish sovereignty. The Zionists reconfigured these loyalties and rooted them in territory: the "new Jew" was to be a citizen of a future Jewish homeland, building up "a Jewish nation from within" Palestine.\textsuperscript{114}

The Zionist split with the Alliance was explicit. Chaim Weizmann, the leader of the Zionist delegation to the Peace Conference at Versailles, the president of the World Zionist Organization in 1920, and the first President of the State of Israel, expressed a complete and continual "opposition"\textsuperscript{115} to the Alliance. The Zionists defined their national-territorial identity in significant part by rejecting the

\textsuperscript{111} See Laskier, \textit{supra} note 26, at 156 (conveying the Alliance's strong negative reaction to the newly created French schools).

\textsuperscript{112} See Laskier, \textit{supra} note 34, at 352 (discussing the belief of some French officials that the Alliance had become outdated and the tuition-free Franco-Israelite schools were a suitable replacement with a sound educational curriculum).


transnational strategy propounded by the Alliance ("internationalization," in the words of Weizmann).116 While the Alliance argued that the Jews "have not been a nation for two thousand years,"117 for the Zionists the Jews were "an organization which is nationalist in its fundamental views" and cannot "give up an iota of our national program."118 Against the Alliance position that "there is no such thing as geographical Judaism,"119 Weizmann emphasized that Jewish Nationalism means the "return of the Jews to Palestine and setting up there a Jewish life 100%."120

The Zionists attacked the Alliance from both sides of its complex identity. Theodore Herzl explained that the Alliance was "neither universal, nor an alliance nor—least of all—Jewish."121 Herzl argued that the Alliance was not really supporting universal values, but rather its existence suggested a secret "international association of Jews" that was "plotting to establish a Jewish world dominion" and which "constitute . . . [a] 'state within a state' which is justly taboo."122 The "sooner this 'Alliance' disappeared from the face of the earth," Herzl held, "the better . . . ."123

In practical terms, the Zionists stood in direct opposition to the Alliance plan of Jewish integration into external society both in Eastern Europe and in Palestine. In Eastern and Central Europe, the Alliance held that anything short of making the Jews into citizens with equal civil and political rights meant establishing "the ghetto system reversed."124 The Zionists, in contrast, demanded complete Jewish legal and political institutional separation. The Zionists' objective was to federate all Jewish communities as a Jewish nation and to admit the Jews "as a people of fifteen million," into the

116. Letter no. 359 from Chaim Weizmann to Tschlenow (telegram), in IB THE LETTERS AND PAPERS OF CHAIM WEIZMANN, supra note 97, at 383.
117. WEILL, supra note 37, at 205 (citing Professor Sylvain Lévi, the President of the Alliance in 1919).
118. Letter no. 411 from Chaim Weizmann to Harry Lewis, in IB THE LETTERS AND PAPERS OF CHAIM WEIZMANN, supra note 97, at 423.
119. Abitbol, supra note 46 (emphasis added).
120. Letter no. 204 from Chaim Weizmann to Felix Frankfurte, in IX THE LETTERS AND PAPERS OF CHAIM WEIZMANN 204-5 (Barnet Litvinoff ed., 1978).
121. HERZL, supra note 98, at 110.
122. LASKIER, supra note 26, at 195.
123. HERZL, supra note 98, at 111.
League of Nations as a separate nation, as an interim step toward a Jewish state in Palestine. Such claims for the legal and political separation of the Jews from the majority populations around them in Europe meant for the Alliance destroying “everything for which French Jewry had worked since the French Revolution.”

In its operations in Palestine, the Alliance called for caring for the existing Jewish population while always ensuring “freedom and equality” for all non-Jewish inhabitants. Sylvain Lévi, President of the Alliance in 1919, explained that:

It would be unconscionable to expel the Palestinians from the land where they have lived for centuries to house Jews flocked from all parts of the world. The current inhabitants have more rights on the ground than the descendants of people dispersed for nearly two thousand years and which, before the Christian era, were not established there unmemorable time. Moreover, as the current population counts approximately 500,000 people including 120,000 Jews, one does not see how, either by expelling the Palestinians more or less in a friendly way, or by improving the methods of cultivation, one could make a living for more than a tenth of the Jews scattered in the world.

The Zionists understood the Alliance’s program for Palestine as a plan for the “internationalization of Palestine.” The Alliance, Weizmann explained, fought in the name of universal principles and “in the name of justice” aimed to defend all mankind and to “protect the interests of the Arabs.” But this “internationalism” of Palestine, in effect, “betrayed the national interests of the [Jewish] people.” For Weizmann, this was “well, a form of idolatry,” indeed “a great

128. Id.
130. Id.
Chilul Hashem [blasphemy]."\textsuperscript{133}

In direct contrast to the internationalization of Palestine, the Zionists called for a Jewish nationalization of the land. At the Paris Peace Conference’s session on Palestine, Weizmann asked to ensure conditions in Palestine that would “enable (them) to send immigrants to Palestine . . .” and to “to develop our institutions, our schools and our Hebrew language.”\textsuperscript{134} Weizmann continued, if the Jewish “nationality forms the majority of the population, then the moment will have come to claim the government of the country”\textsuperscript{135} and to ultimately establish there a Jewish nation-state and make “Palestine just as Jewish as America is American and England is English.”\textsuperscript{136}

While the Alliance believed that citizenship in a European-style liberal state provided the best guarantee of safety and undertook a collective fight for Jewish equality of rights, the Zionists held that the only defense for the Jews was their own territorial political unit in Palestine. Nahum Sokolov, a Polish writer and an important Zionist leader, explained that even if Jews obtained equal rights in Russia and Poland, still “there would most certainly be an acute Jewish question even then” and the Jewish question would remain “just as burning.” “The only solution of the problem,” Sokolov concluded, “was the Zionist solution along national lines.”\textsuperscript{137} The Zionists, therefore, made a return to Palestine the keystone of their Jewish political program, deeming the issue of East European civil rights less important or even irrelevant.

Despite the acrimonious relationship between the two movements, the Alliance ironically played an important role in the ultimate success of the Jewish national home. Much before the creation of the State of Israel in 1984, or even the First Zionist Congress in 1897, the Alliance schools had already radically transformed the condition

\textsuperscript{133} Chaim Weizmann, Report to London Zionist Conference (Mar. 5, 1919), \textit{in} IB \textsc{The Letters and Papers of Chaim Weizmann}, \textit{supra} note 97, at 235.

\textsuperscript{134} \textit{Id.}

\textsuperscript{135} Notes Recorded at Proceedings Before the Supreme Allied Council (Feb. 27, 1919), \textit{in} IB \textsc{The Letters and Papers of Chaim Weizmann}, \textit{supra} note 97, at 231.

\textsuperscript{136} Weizmann, \textit{supra} note 133.

\textsuperscript{137} Notes of meeting held on Thursday February 8th 1917 at the residence of Sir Mark Sykes, 9 Buckingham Gate, London W. from the American Jewish Archives' Small Collection on Zionism (SC 13368-13376).
of world Jewry. The schools taught individual Jews coming from the ghettos of the Muslim East how to act as political persons and how to function in the modern world. They instilled in the Jewish people as a whole the idea of a Jewish unity that mobilized patterns of modern political existence and gave legitimacy to a permanent Jewish political movement. It was these foundations, established by the Alliance in order to build a transnational political network that the Zionists would later build upon and turn toward territorial and national ends.\(^{138}\)

Furthermore, the Alliance schools, particularly those in Palestine, unintentionally supplied some of the key practical foundations for the success of a Jewish state in Palestine. The Alliance agricultural schools and settlements taught the early Jewish settlers in Palestine how to work the land. David Ben Gurion, the first Prime Minister of the State of Israel, captured the importance of the Alliance agricultural schools for the Zionist project: “The creation of the State was made possible by” the founding of the Alliance’s schools in Palestine. If the schools had not been founded, “[i]t is doubtful that the State of Israel could have come into being.”\(^{139}\) The Alliance also played a key role in the revival of the Hebrew language. One of the Alliance teachers, Eliezer Ben-Yehuda, transformed the Hebrew language using a similar method used in other Alliance schools throughout the world.\(^{140}\) Ben-Yehuda encapsulated the complex relationship between the Alliance and Zionism by arguing that the Alliance was “the bitterest enemy” of Zionism, but he also recognized that the Zionists “owe [a] deep gratitude” to the Alliance school “for reviving the Hebrew language.”\(^{141}\)

While scholars have assumed that networks gain power at the

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\(^{138}\) I am building here on GRAETZ, \textit{supra} note 43, at 287 (“[E]specially owing to the network of [Alliance] schools . . . the impetus to transform the base [of a world body] was provided, and the idea of a modern Judaism that did not confine its borders to a single country became more concrete.”).

\(^{139}\) Ben Gurion refers to the Alliance's agricultural school, Mikveh Israel. Silberman, \textit{supra} note 23.

\(^{140}\) See JACK FELLMAN, \textit{THE REVIVAL OF A CLASSICAL TONGUE: ELIEZER BEN YEHUDA AND THE MODERN HEBREW LANGUAGE} 49 (Joshua A. Fishman ed., 1973) (explaining the method Ben-Yehuda used to teach Hebrew—“teaching Hebrew through the medium of Hebrew itself”—which was a similar method to how French was taught by the Alliance).

\(^{141}\) \textit{Id.} at 48-49.
expense of the state, the territorial and the transnational can in fact interact in ways that are more complex and interdependent. The complex relationships between the Alliance, the Zionists, and the French state suggest that the transnational ethnic-religious network and the territorial state can exploit each other in a multitude of arrangements, and are to some extent defined by their interactions with each other. Neither the state nor the network can permanently exclude the other form from its ambit, and their relationships lead to effects that are unpredictable over time.

II. THE STATE AND THE NETWORK AFTER WORLD WAR I

A. THE PARIS PEACE TREATY AND THE MINORITIES TREATIES

The formalization of the international legal system that occurred at the Paris Peace Conference at the conclusion of World War I had far-reaching consequences for transnational networks like the Alliance, which had flourished in the less rigid pre-war environment. Perhaps surprisingly, the Alliance itself was a significant player in enacting these legal changes. At the Conference, the Alliance sought to use international legal discourse to carve out Jewish collective rights while bypassing national avenues. Ultimately, however, the network’s lawmaking efforts at the international gathering in Versailles assisted in systematizing the state form as the pragmatic mold of political organization and in precluding the network from achieving formal status at the international level.

The outcome of the Paris Peace Conference was seen, at the time, as a major triumph for the Alliance. Although the transnational group lacked any legal or political standing, it nonetheless played a surprisingly active role in shaping outcomes, and even drafted major legislation—a fact that has disappeared from the mainstream narrative on the history of international law. Recounting the lobbying role of the Alliance in Paris 1919 thus forces us to reconsider aspects of the genealogy of the law. The primary goal of the Alliance at the Conference was to ensure that the new states born in Central and Eastern Europe would guarantee equal legal and political rights for all inhabitants, regardless of religious or ethnic orientation. Reluctantly, and as a concession to the clamor by Zionists about the violent reality faced by the Jews of Central and Eastern Europe, the
Alliance added to its demands for *individual* citizenship a claim for *group* minority rights, designed to secure cultural autonomy for all minorities in the new states of Central and Eastern Europe.\(^{142}\)

The Alliance submitted a memorandum to the Peace Conference Secretariat asking to force upon the new states national laws that would remove all civil and political restrictions on their minorities (protecting individual members of the group against discrimination) and would award the minority, as a collectivity, positive group rights distinct from those of the individuals composing it (protecting against the cultural assimilation of the minority as a *group* as into the majority).\(^{143}\) These positive group rights included cultural freedom and, in particular, autonomy over the maintenance of schools and religious education.\(^{144}\)

The final draft of the Minorities Treaties “realised to the full” the expectations of the Jewish network, in the words of one key Alliance negotiator.\(^{145}\) The impact of the Alliance on the codification of the

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\(^{142}\) The Alliance delegates explained:

[S]ince the Polish Jews were attached to their Yiddish dialect, any attempt to restrict its use would inflict hardship upon them and would therefore be viewed as persecution. On the other hand, if unmolested for about a quarter of a century, the Jews . . . would assuredly abandon the jargon in favor of the language of the country.

JANOWSKY, *supra* note 125, at 326. There is vast literature on the violent reality of the Jews of Central and Eastern Europe at this time, see, e.g., Theodor Fritsch, *The Racists’ Decalogue*, in THE JEW IN THE MODERN WORLD: A DOCUMENTARY HISTORY 287 (Paul Mendes-Flohr & Jehuda Reinharz eds., 1995) (describing the call for German anti-Semitism towards German Jews).

\(^{143}\) See JANOWSKY, *supra* note 125, at 324 (recounting the memorandum submitted as calling for the assurance of citizenship with “equal civil and political rights . . .”).

\(^{144}\) See *id.* at 324 (“The [memorandum] called for religious [and] educational . . . autonomy . . . [including a] provision urg[ing] that all religious and cultural minorities should . . . [have rights] on a footing of equality.”).

\(^{145}\) Lucien Wolf, Maccabaeans’ dinner in honor of Lucien Wolf: invitation, seating list, and Lucien Wolf’s speech (June 8, 1920), p. 2 of the speech, YIVO archives (Series I Lucien Wolf: Personal (folder 1; reel 1/1)). It is useful to compare briefly the Alliance memorandum to the Peace Conference Secretariat with the final draft of the Polish Minorities Treaty, which served as the test case. As in the Alliance memorandum, the first category of rights in the Polish Treaty (Articles 2-6) prevented discrimination against individuals. The second category of rights (Articles 7-8 of the Polish Minorities Treaty), included linguistic and cultural autonomy as well as institutional rights and awarded a minority both the legal privilege and cultural space to remain a distinct group and a right of non-assimilation into the majority group.
Treaties was also acknowledged from outside the network. The Director of the Minorities Section of the League Secretariat identified in 1920 the role of the “powerful Hebrew organizations” as strong influences in the negotiation of the Minorities Treaties.\textsuperscript{146} Historians have drawn similar conclusions.\textsuperscript{147}

In order to compel the young states born across Central and Eastern Europe to sign the Minorities Treaties, the Alliance exploited the procedural doctrine of recognition, by which states and international organizations formally recognize the juridical and territorial autonomy of new entities on the international stage, legally conveying sovereignty.\textsuperscript{148} Recognition was important for the young states both as a legal acknowledgment that they exist as a matter of international law and as a requirement for political and economic relations with other states.\textsuperscript{149} The gap in power between the strong Allied powers that could grant recognition and the new states that sought formal acknowledgement provided the Alliance with an opportunity to exploit this doctrine.

The Alliance consciously aligned its own interests in international supervision of minority subjects in the new states with those of the Allied states that could award recognition. The latter then coerced new states into allowing a measure of international intervention in their internal affairs in return for the Allied powers’ extension of international recognition of their independent juridical status. The strategy was summed up by Lucien Wolf, the principal designer of policy for the British Jewish Joint Foreign Committee, which collaborated intimately with the Alliance in the effort:\textsuperscript{150} the object

\begin{itemize}
\item \textsuperscript{146} P. DE AZCÁRARE, \textit{LEAGUE OF NATIONS AND NATIONAL MINORITIES: AN EXPERIMENT} 6 (Eileen E. Brooke trans., 1945).
\item \textsuperscript{147} See JANOWSKY, supra note 125, at 385 (“[t]he Peace Conference was induced, largely through the efforts of Jewish representatives, to guarantee ... civil, political and religious equality).
\item \textsuperscript{148} For a discussion of the doctrine of recognition, see generally DAVID KENNEDY, \textit{INTERNATIONAL LEGAL STRUCTURES} 129-150 (1987) (highlighting the importance of the recognition doctrine).
\item \textsuperscript{149} See HANS KELSEN, \textit{PRINCIPLES OF INTERNATIONAL LAW} 389-91 (Robert W. Tucker ed., 2d ed. 1966) (explaining the difference between legal and political recognition for young states and why they are necessary conditions for international relations).
\item \textsuperscript{150} Wolf explained that he and the Alliance were in “complete agreement” in Paris 1919. See Lucien Wolf, Diary of Lucien Wolf (Jan. 15, 1919), p. 7, YIVO archives (Series I Lucien Wolf: Personal (folder 6; reel/frame 1/387)).
\end{itemize}
was to limit “the right of Sovereignty” in its internal national and “domestic relations.” For this, “the Jewish question . . . cannot be separated from the general political question.”

The following section briefly reviews four ways in which the Alliance was able to align Jewish interests with those of the Allied states in Versailles: (1) the Alliance’s representatives carefully chose the moment of their intervention in the peace negotiations; (2) the network developed a well-coordinated operation with other Jewish bodies from England and the United States; (3) the leaders of the Alliance and their collaborators cultivated access to key people of power in the various Allied states; and (4) the Alliance highlighted the “extreme” Zionist demands in order to advance their own relatively modest goals of equal civil, educational, and religious rights. Each of these factors is discussed in some detail below.

The Alliance representatives carefully selected the right moment for Jewish intervention in the international realm. Lucien Wolf prepared for the eventual peace settlement on a full-time salaried basis starting in 1915. He used the years of the First World War to work his way “into the closest confidential relations with the Foreign Office,” and by 1919 was able to “find out at any given moment what was going on in the embassies and chancelleries of Europe.”

While gearing up since 1915, Wolf deliberately waited until the time “for peace negotiations and the construction of the New Europe arrives before pushing forward the issue of minority rights.” In the political and cultural confusion that prevailed at the Peace talks, the Alliance enjoyed an advantage; the uncertain terrain favored the bargaining skills and diplomatic experience of Wolf and the Alliance negotiators.

At Versailles, the Alliance developed a well-coordinated operation with other Jewish bodies from both sides of the Atlantic, including the British Jewish Joint Foreign Committee and the American Jewish

151. Id. at 3.
153. Id. at 43.
154. Id. at 44.
155. Id. at 46.
156. Letter from Lucien Wolf to Clara Melchior (Nov. 16, 1914), in Levene, supra note 152, at 37.
Delegation. The cooperation between the three groups allowed them
to share knowledge and information and to generate simultaneous
pressure-group politics with the different Allied powers.\textsuperscript{157}

The leaders of the Alliance, and their collaborators, also cultivated
access to people of power in the different Allied states. Of particular
benefit was the relationship between the members of the delegation
of the American Jewish Congress and Woodrow Wilson. The
American President and Justice Louis Brandeis were friends—and
Brandeis was partly responsible for Wilson's interest in Jewish
national or minority rights.\textsuperscript{158} Stephen Wise, one of the delegates in
the American Jewish Congress, was also a friend of Wilson and
arranged a meeting with the President before the trip to Paris. In the
meeting, Wilson committed himself:

\begin{quote}
Every one of the groups and peoples that are intolerant of the Jews is an
applicant to us for something, for some help and favor at our hands . . . . I
mean to insist that the thing we are discussing shall be written into the
new covenant that has to be made with every one of them.\textsuperscript{159}
\end{quote}

The Jewish leaders presented Wilson a draft, modified by David
Hunter Miller, the leading American legal expert in Versailles, for
minority protection. This formula later appeared on the agenda of the
Supreme Council of the Allied leaders in Paris. Partially a
consequence of this Jewish draft formula, a new committee, the
"Committee on New States," was created in Paris with the mandate
to prepare the clauses for the protection of minorities.\textsuperscript{160} The Alliance
was also able to exercise substantial influence over the working of
the Committee. Lucien Wolf cultivated a close friendship and
enjoyed nearly daily access to Sir James Headlam-Morley,\textsuperscript{161} the man

\begin{footnotes}
\item[157] For this collaboration, see generally \textit{id.} (highlighting the success of the
Alliance in generating pressure-group politics with other Allies). \textit{See also NAOMI
W. COHEN, NOT FREE TO DESIST; THE AMERICAN JEWISH COMMITTEE 1906-1966
102-122} (1972).
\item[158] JANOWSKY, \textit{supra} note 125, at 255 (discussing the intimate relationship
between President Wilson and several Jewish leaders, many of whom constantly
pleaded for the protection of minorities).
\item[159] COHEN, \textit{supra} note 157, at 114.
\item[160] LEVENE, \textit{supra} note 152, at 282 (stating further that the creation of the
minority protection clauses represented the satisfaction of the international
obligations owed by the new states to the Allies).
\item[161] David Hunter Miller, one of the two leading American legal experts in
Versailles, accused Headlam-Morley of supporting the Jewish cause "to the extent

\end{footnotes}
most responsible for laying out the foundations of the Minorities Treaties.\textsuperscript{162} Headlam-Morley would later formally thank Wolf for his "great assistance" in drafting the Minorities Treaties.\textsuperscript{163}

Finally, Sylvain Lévi and Lucien Wolf were able to use the extreme Zionist demands as the "strongest weapon and best arguments"\textsuperscript{164} to advance their own relatively moderate demands for equal civil, educational, and religious rights with all other minorities—religious or ethnic. Wolf explained this strategy in his diary: "the success of our negotiations . . . depends on the degree of support we might get from the Allied governments against the extreme demands of the Zionists."\textsuperscript{165}

In a presentation on the question of Palestine before the Supreme Allied Congress, Sylvain Lévi publicly emphasized to the Allied powers that the Zionists threatened the new world order on at least three fronts. First, the Zionist claim for a Jewish national home in Palestine was dangerous because it ignored that fact that an Arab population already "exists on this soil" and that this soil "can now only nourish a small population."\textsuperscript{166} This, Lévi predicted, would lead to a "disproportion between the area of Palestine and the hundreds of thousands, probably millions, of human beings who aspire to find a refuge there."\textsuperscript{167}

Second, the Zionists' claim for recognition as a national minority in the new states in Central and Eastern Europe was "explosive"
because the Zionists were trying to invent a separate Jewish nation within territories of already existing nations.  

"[N]ations cannot be improvised" and should not "be created at will, and the realization of a certain number of aspirations would not suffice to create a national entity . . . ."

Third, the Zionists were "singularly dangerous" within the Allied states because they generated a larger juridical problem:

A formidable precedent, that of calling upon men, who in their own countries exercise in full plentitude their rights of citizenship, to exercise the same political rights in another country. It is . . . creating a class of privileged citizens who would at the same time participate in all elections in their own countries and who would be called besides to exercise similar, if not identical, rights in a distant country where they surely could not have direct interests, and which perhaps they could not even have visited . . . [The Zionists] demand for the Jews of Palestine privileges and an exceptional Situation. Every exception always ends by reacting against those who demand it and benefit from it.

Against the explosive nature of Zionist demands, the Alliance and the British Jewish Joint Foreign Committee defined their own claims on behalf of world Jews in terms that comported with the liberal international culture in Paris at the time. They presented their particular organization "preoccupied with Jewish interests," not as a nation, but a religious association that was always "fully

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168. Id. at 228.
169. Id. at 228.
171. 1 LETTERS AND PAPERS OF CHAIM WEIZMANN, Series B, 228 (Transactions Books, Rutgers University, 1983).
174. See JANOWSKY, supra note 125, at 296 (quoting Eugène Sée—one of the Alliance representatives in Paris—explaining his categorical opposition to any Jewish claims for national rights "because the word 'national' implies the existence
conscious of its duties to the fatherland." At the same time, they introduced themselves in their individual capacity. Lévi referred to himself in Versailles as a "Frenchman," and "a Jew by origin, that is Jewish in sentiment, but French above all." Wolf, in turn, declared that he understand himself to be a British citizen, an Englishman before he was Jew. The Alliance located their governing network outside the statist-territorial form of political identity that was institutionalized in Versailles, thereby ensuring a non-threatening appearance at the Conference.

By building on the procedural doctrine of recognition and by aligning their interests with those of the Allied powers, the Alliance marched "triumphantly through the Paris Peace Conference, routing East European Jewish nationalists and defining minority rights for the peace settlements." The Alliance had used international law as a site of power against the new states that emerged in Central and Eastern Europe, structuring those states’ relationships with their own populations and within their own territorial boundaries. This power to infringe upon the most basic sovereign right of nations went much beyond what the Jewish network could have achieved through direct negotiations with the new states. The extraordinary role played by the Alliance, a transnational network, in the codification of new international law stands in conflict with the common assumption that only states make international law and compels us to rethink the main lines of international legal history. It is all the more surprising that the period beginning in the late nineteenth century and ending in the 1940s is generally considered the heyday of national sovereignty and a time that established the view that states alone could make law, and only they are bound by it. But the lawmaking triumph of the Alliance was also the beginning of the network’s political undoing, as the state-centered regime of the new treaties would ultimately

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175. Abitbol, supra note 46, at 37.
176. U.S. DEP’T STATE, IV PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES: THE PARIS PEACE CONFERENCE 1919 (Government Printing Office, 1943) (Secretary's notes of a conversation held in M. Pichon's room at the Quai d'Orsay, Paris, Feb. 27, 1919, 3:00 PM).
178. BLACK, supra note 126, n.51.
leave network entities marginalized. Woodrow Wilson was most responsible for pushing forward the doctrine of national self-determination; his rationale was political: an international attempt to secure a lasting public order within stable and recognized territorial frontiers. Alas, the principle of nationalities could not extend to all the populations of the area between Germany and Russia. The unhappiness of these people denied self-determination and membership in their natural nation-states provided, according to Wilson, the “fertile sources of war.” The Minorities Treaties were intended to domesticate the danger posed by people who now belonged by citizenship to new states but by ethnic or religious nationality to another state. The Treaties introduced a new protected category, the “minority,” as a way of allowing the ethnic and religious “other” to enter the state-system of organization and to reconcile with the territorial polities within which they found themselves. By providing for the protection of minorities, the Treaties allowed international law to sanction the creation of national states, making the international protection of minorities “a strict and logical corollary of the principle of self-determination of nations.”

This legal compromise debuted in the Polish Minorities Treaty, which served as the model for all subsequent Minorities Treaties. The Treaty of Versailles, which recognized the Polish state, and the

179. See Stephen D. Krasner, Explaining Variation: Defaults, Coercion, Commitments, in PROBLEMATIC SOVEREIGNTY: CONTESTED RULES AND POLITICAL POSSIBILITIES 331 (Stephen D. Krasner ed., 2001) (recounting Wilson’s belief that national self-determination was a necessary condition for international peace and stating that the means by which to create ethnically homogenous states was to “reconcile ethnic minorities to the polities within which they found themselves”).


Minorities Treaty were signed on the same day, signaling that Polish sovereignty was conditioned upon Poland’s agreement to protect its minorities.183

The minority system consisted of sovereign states bound by obligations to certain categories of individual citizens. The Preamble of the Polish Minorities Treaty declared the “restor[ation] of the Polish nation” and the consequent international recognition of Poland as a “sovereign and independent State.”184 At the same time, the Treaty stipulated that individuals within Polish territory belonging to “racial, religious or linguistic minorities” would receive equal state citizenship and mandated removal of all civil and political restrictions on individual members of the minorities.185

While the state was recognized as a subject of the law with direct cause of action on the international realm, and while even the individual was awarded an indirect right of action, the minority itself was structured as a cultural entity housed within the state and lacking political autonomy and legal identity. Articles 7-9 of the Polish Minorities Treaty extended religious, educational and cultural autonomy to the minority and legalized the cultural difference of the minority as a group in the new Polish constitution. But these group rights “were limited to the minimum,” in the words of Georges Clemenceau, Prime Minister of France. Clemenceau emphasized that the Treaties were tailored so as not “to create any obstacle to the political unity of Poland” and that the minority was explicitly barred from organizing itself as “a separate political community.”186 Article 11 of the Polish Minorities Treaty, moreover, established a clear hierarchical relationship between the minority’s cultural rights and the larger political state. While recognizing a Jewish collective right to observe the Sabbath, the Article subjugated this collective right to the interests of the state, and specified that “necessary purposes of

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183. The Permanent Court of International justice in the Polish Nationality Case explained: “Poland . . . at the moment of her final recognition as an independent state and at the elimination of her frontiers, signed provisions which established a right to Polish nationality . . . .” Acquision of Polish Nationality, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 7, at 15 (Sept. 15).
184. Polish Minority Treaty, supra note 182.
185. Id. arts. 206.
military service, national defence or the preservation of the public order” trumped the Sabbath right. Sir James Headlam-Morley captured the unequal relationship between the two forms of organizing identity: “the territorial sovereignty of the state is the basis of our whole political system.” Within this framework, the “minority” was “extremely moderate” in its demands for rights. In fact, Headlam-Morley went so far as to explain that even if the denial of rights to minorities “might lead to injustice and oppression, that was better than to allow anything which would mean the negation of the sovereignty of every state in the world.”

The invention at Versailles of a new legal category of identity—the “minority”—might have led to some sort of formal recognition of transnational ethnic and/or religious networks, especially as one such network played a significant role in devising the new system. However, the interests of the states precluded the recognition of such entities, and the rights of minorities were carefully defined to fall short of political independence and legal sovereignty outside the confines of their host state. The effect of the dual legal instruments of the Minorities Treaties and the Peace Treaty (recognizing the right of self-determination) was to exclude the Alliance and other transnational networks of the time from the newly formalized international legal system.

B. RULINGS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

While the new regime denied minority groups direct status and formal standing in international forums, the legal framework was still open to multiple possible interpretations. Importantly, it was not yet resolved whether the ultimate object of the new order was to ensure the “gradual and painless assimilation” of the minority (the “Franco-

187. Polish Minority Treaty, supra note 182.
188. A.A. Young, Commercial Policy in German, Austrian, Hungarian, and Bulgarian Treaties, in 5 A HISTORY OF THE PEACE CONFERENCE OF PARIS 137 (H.W.V. Temperley ed., 1921).
Melon thesis”) or the indefinite preservation of the minority as an “other.”\(^1\) In 1920, the League of Nations set up the Permanent Court of International Justice (“PCIJ”), the first permanent international tribunal with general obligatory jurisdiction, and gave the Court a mandate to clarify legal issues relating to the implementation of the new system.\(^2\) The decisions of the Court institutionalized the legal order, determined its nature, and “made a tangible contribution to the development and clarification of the rules and principles of international law.”\(^3\) The Permanent Court was replaced after World War II by the International Court of Justice (“ICJ”), an organ of the United Nations. The ICJ retained almost unchanged the statutes of the PCIJ, and the two courts maintained a continuity of jurisdiction.\(^4\)

This section surveys four cases that came before the PCIJ during the 1920s and ‘30s under the Minorities regime, focusing in particular on those rulings affecting minority schools. These are: the Minority Schools in Albania case, concerning the right of minorities to run private schools under the terms of the Minorities Treaties;\(^5\) the Acquisition of Polish Nationalities case, investigating the citizenship rights of persons of German origin in the new Polish state; \(^6\) the Rights of Minorities in Upper Silesia, a case dealing with questions of schooling and the linguistic identity of the

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191. For a discussion on the differences between the doctrine of gradual minority assimilation and the doctrine of preservation of the minority, see, e.g., Baglay, supra note 180, at 182-86 (discussing assimilation of minority groups, and the differences between permanent assimilation and a gradual, transient process).

192. For a discussion of the International Court of Justice, its organization, competence, procedures and Advisory Opinions, see generally BARRY E. CARTER, PHILLIP R. TRIMBLE & ALLEN S. WEINER, INTERNATIONAL LAW 324-34 (Vicki Been et al. eds., 2007); Kelsen, supra note 149, at 532-546.


194. See id. at 3 (“[I]n effect, the [International Court of Justice] is a continuation of the [Permanent Court of International Justice] . . . ”); see also F. P. WALTERS, A HISTORY OF THE LEAGUE OF NATIONS 170-171 (1952) (“[T]he new International court set up by the United Nations is almost an exact reproduction of the Permanent Court set up by the League.”).


minority;\textsuperscript{197} and finally, the \textit{Greco-Bulgarian Communities} case, which asked whether minorities protections bestowed legal and political status on non-state groups and whether they accorded such “communities” a special relationship to the pertinent kin-state. \textsuperscript{198}

The \textit{Minority Schools in Albania} case dealt with a dispute between Albania and Greece over Articles 206-207 of the Albanian Constitution (1933), which abolished all private schools in the country, including minority schools, and demanded that the education of all Albanian subjects be “reserved to the State and . . . given in State schools.”\textsuperscript{199} Greece brought the suit against Albania (a signatory to the Minorities Treaties), in support of the Greek minority living in that country.\textsuperscript{200} The Greek case rested on Article 5 of the Albanian Declaration (1921), which guaranteed to minorities in Albania “the same treatment and security in law and in fact as other Albanian nationals.” \textsuperscript{201} Greece claimed that equality in fact demanded a different treatment of minority schools from that of state schools.\textsuperscript{202} Albania, however, argued that because its abolition of private schools constituted a general measure applicable to the majority as well as the minority, it was in conformity with the obligations it undertook to grant minorities the same treatment in law as that granted to other Albanian nationals.\textsuperscript{203}

In its Advisory Opinion, the Court rejected the plea of the Albanian government and found in favor of the Greek minority’s right to run private schools, even if such schools were not permitted for the majority population. The judges explained that “[t]he idea underlying the treaties for the protection of minorities” was to give an international guarantee to maintain the “very essence” of being a

\textsuperscript{197} Rights of Minorities in Upper Silesia (Minority Schools) (Ger. v. Pol.), Judgment, 1928 P.C.I.J. (ser. A) No. 15, at (Apr. 26). On the unique legal reality in Upper Silesia, see generally Berman, \textit{But the Alternative is Despair}, supra note 181, at 1893-98 (examining the fifteen year history of the partition of Upper Silesia between Germany and Poland).

\textsuperscript{198} Convention Between Greece and Bulgaria Respecting Reciprocal Emigration (Question of the “Communities”), Advisory Opinion, 1930 P.C.I.J. (ser. B) No. 17, at 5 (Jul. 31).

\textsuperscript{199} \textit{ALBANIAN CONSTITUTION}, Dec. 1, 1928, arts. 206-207.

\textsuperscript{200} Minority Schools in Albania, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64, at 7-8 (Apr. 6).

\textsuperscript{201} \textit{THE ALBANIAN DECLARATION OF OCT. 2, 1921} art. 5 (1921).

\textsuperscript{202} \textit{Minority Schools in Albania}, 1935 P.C.I.J. at 12.

\textsuperscript{203} Id. at 15.
minority. This protection was designed to ensure the possibility of the minority and majority “living peaceably” alongside one another and “co-operating amicably,” attaining an “equilibrium.” The terms of the coexistence guaranteed the minority the right to develop “the characteristics which distinguish [the minority] . . . from the majority,” and prohibited the state from adopting “a privileged situation as compared with the minority,” because that would mean “there would be no true equality.”

To secure an equilibrium between the minority and majority, the Court declared that two conditions must be met: first, the minority must be guaranteed “suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics;” and second, the minority must be “placed in every respect on a footing of perfect equality” with the majority. The latter included assuring “equality in fact,” not just “equality in law,” between the minority and majority populations. The Court found that “equality in fact” “may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations.” The two conditions, equality and perseverance of special qualities, were “closely interlocked;” the judges explained that the satisfaction of both necessitated that the minority enjoy self-rule over its “charitable, religious, and social institutions, schools and other educational establishments . . . .” Depriving the minority of these institutions would mean compelling it to also “renounce that which constitutes the very essence of its being as a minority.” The Court declared that:

[Separate minority schools alone could] satisfy the special requirements of the minority groups, and their replacement by government institutions would destroy this equality of treatment, for its effect would be to deprive the minority of the institutions appropriate to its needs, whereas the majority would continue to have them supplied in the institutions created

204. Minority Schools in Albania, 1935 P.C.I.J. at 17.
205. Id. at 17, 19.
206. Id. at 17, 20.
207. Id. at 17.
208. See generally id. at 18-20.
209. Id. at 19.
210. Id. at 17, 19.
211. Id. at 17.
While the decision guaranteed the right of the minority to maintain its special essence and way of life, the Court contained this zone of freedom within the limited realm of culture and culture-building institutions such as "charitable, religious, and social institutions, schools and other educational establishments." 213 Outside the cultural realm, the judges declared that the minority was an entity "incorporated in a State." 214 As a status within a state, the freedom of the minority was always fundamentally enclosed within a larger frame of territorial homogeneity. This decision awarded the minority rights to define and sustain its essence, and privileged the institutions it deemed responsible for fostering this essence, but explicitly located the minority within statist territorial boundaries. 215

The Minority Schools in Albania ruling left unresolved the limits between the separate cultural life of the minority and the common political system shared by the minority and majority (presumably including elements such as foreign relations, military, etc.). Moreover, even within the limits of the cultural realm, the Court did not define the precise nature of the independence that the minority was guaranteed. Minority cultural practices fall upon a continuum in terms of their potential to generate conflict with the state. Some practices, such as holidays, folk songs, or dietary restrictions, are less likely to generate conflict, while others may overlap significantly with the public realm of the state, or destabilize the state's project of market unification. For example, a religious ritual that circumscribes the place of girls in schools can impede a state project to promote gender equality. While the court decided that private minority schools must be permitted, it did not address the question of state regulation of private schools. The ruling suggested that the sovereignty of the State should not be more favorably treated than the right of the minority, 216 which may appear to suggest complete

212. Id. at 20.
213. Id. at 17, 19.
214. Id. at 17.
215. See id. (reasoning that one of the ideas underlying the treaties for the protection of minorities is to ensure for minorities the preservation of racial traditions and national characteristics).
216. Id. at 22 (finding it unnecessary to examine the argument put forth by the Albanian government that the text of Article 5 should be interpreted in a manner
independence for minority schools. But the Court also wrote that the state could supply the minority with "something additional to private education," though it is "not meant to take the place of private education," hinting at the permissibility of some regulation. These vague statements ultimately provide no guidance on either the minority’s right to use its educational institutions to compete with the state as a socializing force, or on the state’s freedom to encroach upon minority education through the regulation of private schools.

In the Acquisition of Polish Nationalities case, Poland sought to exclude persons of German origin from Polish nationality, arguing that as a sovereign state it had exclusive jurisdiction over its domestic affairs, including defining the criteria for citizenship. Further, as non-citizens, those individuals of German descent living in Poland would not be eligible for any special status or rights as a protected minority. In response, Germany argued that, under the terms of the Minorities Treaty, these German inhabitants of Poland were guaranteed Polish nationality.

In its decision, the Court found that the simultaneous signing of the Peace Treaty (recognizing Polish sovereignty) and the Minorities
Treaties (Poland’s obligation to its minorities) meant that the definitions of both Poland and its population were established under international law.221 This gave the Court, as an international organ, the authority to define the content of Polish nationality. In exercising this power, the Court held that the conception of a “Polish nationals” in Poland included all Polish inhabitants of non-Polish origins as long as they were born in Poland and born to “parents habitually resident there.”222 Under this definition, the Court held that those people of German origin were indeed a Polish minority and were entitled to citizenship rights.223

In exercising its prerogative to define Polish citizenship, the Court seemed to ignore any transnational political ties of the German minority to its kin state.224 The judges held that any links which “effectively” connect “persons belonging to racial, religious or linguistic minorities . . . to the territory allocated to one or other of these states” are irrelevant. In fact, the law attaches no “importance to the political allegiance of these persons.”225 The Court internationalized control over the sovereignty of Poland and the definition of its citizenship, but at the same time structured international law so that it was blind to the political links of transnational networks.

The Rights of Minorities in Upper Silesia case concerned another clash between Germany and Poland, after Poland disqualified the application of a large number of children who wished to enroll in the German minority schools in Polish Upper Silesia as part of a larger battle over the linguistic identity of the area.226 The dispute came under the Geneva Convention (1922)227 signed between Germany and Poland, which included a scheme for the protection of minorities

221. Id. at 14.
222. Id. at 20.
223. Id. at 21.
224. Inis Claude defines “kin-state” as “A state which regard itself as standing in a special relationship to a national minority in another state, by reason of ethnic affinity.” CLAUDE, supra note 172, at 5. More on the kin state debate, see generally id. at 44-47; Berman, “But the Alternative is Despair”, supra note 181, at 1832-34.
225. Acquisition of Polish Nationality, 1923 P.C.I.J. at 15.
226. For more on the international experiment in Upper Silesia, see Berman, But the Alternative is Despair, supra note 181, at 1893-98.
similar to that of the Minorities Treaties.

Article 106 of the Convention stated that minority schools would be established in a particular location if there were at least forty children “belonging to a linguistic minority,” and Article 107 provided for minority language courses in regular schools on the demand of at least eighteen children “who belong to a linguistic minority.” Article 131 (1) specified the parameters for deciding whether a child had the right to such minority instruction: “in order to determine the language of a pupil or a child, account shall be taken of the verbal or written statement of the person legally responsible for the education of the child. This statement may not be verified or disputed by the authorities.” The question before the Court was whether the legal principles established in Article 131(1) set an objective or subjective test for linguistic identity.

Poland, relying on the objective language of Articles 106 and 107, argued that the Article 131(1) should be read as creating an objective test for linguistic identity. This meant that the declaration of a parent or guardian of a child should comport with a factual reality and not reflect “the expression of an intention or of a wish.” Germany, in contrast, focused on the strict prohibition against verification in the language of Article 131(1), and claimed that the question of linguistic identity “must be left to the subjective expression of the intention of the persons concerned . . . .” For Germany, this individual intention was not subject to dispute and “must be respected by the authorities even where it appears to be contrary to the actual facts.”

230. Convention Between Germany and Poland Relating to Upper Silesia, supra note 229, art. 131(1) (emphasis added); Rights of Minorities in Upper Silesia, 1928 P.C.I.J. at 37.
233. Id.
234. Id. at 32.
235. Id. The initial objection was made by Deutscher Volksbund fur Polnisch Oberschlesien, an organization claiming to represent the German minority.
The ruling of the Court in Upper Silesia stated that parents, or legal guardians, were the sole entities entitled to declare whether or not the child "belong[s] to a racial, linguistic or religious minority." But the Court emphasized that this declaration must reflect the "de facto" reality of the situation; indeed, if the declaration did not correspond to facts then the Treaty "would fail in its purpose." In any case, this parental right to decide the identity of the child was not subject to dispute on the part of the state. The result was an indeterminate ruling: for the Court, the right of the parents to declare their child's identity was "free" but not "unrestricted;" it was based on the parents' "consciousness" but had to reflect the "true position" of the identity. The decision framed the relationship between the minority and the state in terms of a conflict of rights between the state and an individual, rather than a community body. The court provided the individual an entitlement against the state, in this case to declare the identity of children and to select the nature of their linguistic education.

Unlike the Minority Schools in Albania decision, the holding of the Upper Silesia case did not use the word "equilibrium." Yet the same logic of separation between the minority and majority within a single political-territorial frame is apparent in both rulings. In the Upper Silesia case, the court appears to envision a form of equilibrium based upon linguistic criteria: German and Polish speaking communities that live side-by-side within a single political entity and whose children are either completely separated through distinct schools or partly-divided by language instruction in general schools.

236. *Id.* at 46-47.
237. *Id.* at 33.
238. The Court held that:

[The German-Polish Convention concerning Upper Silesia of May 1922] bestow[ed] upon every national the right freely to declare according to his conscience and on his personal responsibility that he does or does not belong to a racial, linguistic or religious minority and to declare what is the language of a pupil or child for whose education he is legally responsible . . . . [The decisions on] the question whether a person does or does not belong to a racial, linguistic or religious minority, are subject to no verification, dispute, pressure or hindrance whatever on the part of the authorities.

*Id.* at 46-47.
239. *Id.* at 46.
While the *Minority Schools in Albania* case provided no substantive guidelines on state regulation of minority schooling, the *Upper Silesia* ruling in fact suggests a limit on state interference. The Court explained that a regulatory regime to verify linguistic identity will not be effective because the authenticity of a person’s declaration does “not clearly appear from the facts.” As such, “if the authorities wish to verify or dispute the substance” of individual identity “it is very unlikely that . . . [they] reach a result more nearly corresponding to the actual state of facts.” Indeed regulations may even be positively dangerous and “any verification or dispute on the part of the authorities” risks “inflam[ing] political passions” and “counteract[ing] the aims of pacification.”

Finally, the *Greco-Bulgarian Communities* case concerned the Convention between Greece and Bulgaria Respecting Reciprocal Emigration (1919), which required its parties to “facilitate by all means” the “right[s] of those of their subjects who belong to racial, religious or linguistic minorities to emigrate freely to their respective territories.” The parties agreed to permit emigrants to transport their moveable property and to pay for the liquidation of immovable property. Property covered by the Convention included that both belonging to individuals and that owned by communities, in those “cases where the right of emigration is exercised by members of communities (including churches, schools, convents, hospitals or foundations of any kind whatsoever) which on this account shall have to be dissolved.”

The dispute turned on Article 6 of the Greco-Bulgarian Convention and concerned the parameters for determining the legal existence of such communities, what property communities can materially possess and liquidate, and who decides when a community is dissolved after it emigrates. Bulgaria argued that the community

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240. *Id.* at 34.
241. *Id.*
242. *Id.*
244. *Id.* at 68-69.
245. *Id.* at 70.
246. *Id.*
should be defined by objective criteria and be recognized by state law.\textsuperscript{248} Greece, however, claimed that the existence of the community was a matter of fact based on subjective ethnic criteria, and was independent of recognition by the law of the territorial sovereign.\textsuperscript{249}

In its decision, the Permanent Court provided a legal structure for a "community":

a group of persons living in a given country or locality having race, religion, language and traditions of their own and united by this identity . . . with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.\textsuperscript{250}

The Court supported Greece’s position and declared that the existence of a minority "community," as an entity separate from the individuals that composed it, "is a question of fact," not a question of state law.\textsuperscript{251} The Court, moreover, provided such communities with specific property rights and declared that "churches, convents, schools, hospitals or foundations existing as distinct entities are, when the persons who are members or beneficiaries thereof emigrate, assimilated to communities."\textsuperscript{252}

In accepting the existence and rights of the "community" as a collective that mediated between the "state" and "individuals," the judges acknowledged that their decision broke away from the tradition of denying legal recognition and special rights to minority communities in favor of either state rights or individual rights. The Permanent Court explained this deviation by highlighting the exceptional nature of the case. The judges gave the "community" legal recognition because of the importance of collective identity in "Eastern countries."\textsuperscript{253} It was this "tradition" of "sentiment[s] of solidarity" which played "so important a part in Eastern countries" and that provided "East individuals . . . of the same race, religion,
language and traditions” with “material benefits from time immemorial” that justified their unusual legal treatment. But even in this exceptional case, the judges awarded the community international legal recognition only upon its dissolution, when individual members of the community emigrated to their racially akin state, where they would no longer live as minorities. Moreover, while the Court made an exception and recognized the legal status of the community, what the judges in the case ultimately protected was the collective property of the community that was “assimilated to individual property.” For the Court, the “individual members of the community, and they alone,” were the subjects that could “carry away the movable property of the community and receive the value of its immovable property.”

Reviewing these cases together reveals the particular vision of minority status held by the Permanent Court of International Justice. In Minority Schools in Albania, the Court nationalized the community into a status incorporated within a state and placed it behind the veil of sovereignty, outside the prerogatives of international law. The minority as a collectivity was excluded from international legal identity. In Polish Nationalities, the Permanent Court also unequivocally prohibited any ethnic network, now redefined as a minority, from transnational political ties to their kin across territories, treating the cross-border political allegiance of the minority as irrelevant. This further prevented a minority from

254. Id. at 20-21.
255. The judges explained:
If it is borne in mind that the object of the Greco-Bulgarian Convention was to facilitate the emigration of individuals to the country to which they are racially akin, that the Convention provides for the dissolution of communities precisely because of this emigration and that, in order to encourage individuals to emigrate, it affords them the possibility, conditional upon their emigration, of benefiting individually form the property of the community . . . .

Id. at 26.
256. Id. at 21.
257. Id. at 27.
258. See generally Minority Schools in Albania, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6) (granting Albanian minorities the right to establish various social institutions where they can exclusively work to exercise preserve their culture and religion).
259. See generally Acquisition of Polish Nationality, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 7, at 15 (Sept. 15) (interpreting Article 4 of the Minorities Treaty as referring only to the habitual residences of parents during the date of
achieving political standing within the international realm. The one exception made was in the Communities case, where the Court legally recognized communities with a tradition of collective identity in “Eastern countries,” but even this recognition was awarded only upon the dissolution of the community.260

Within the state framework, the case law assumed a static and idealized equilibrium between the minority and the majority. The decisions described two distinct cultural entities living peacefully side-by-side, each developing its own unique essence and the characteristics which distinguish it from the other, neither enjoying “a privileged situation.”261 The case law failed to consider the potentially destabilizing effect of the economy and the workings of the market on this static coexistence. Further, the existing rulings did not consider the possibility that either the state or the minority might threaten this idealized equilibrium. The state can claim its authority to assimilate the youth of the minority into its own national culture, and use regulations to restrict the minority’s autonomy in education (for example, mandating the minority to employ teachers from the majority population or requiring a particular perspective on national history to be taught). The minority could use its private schools to interfere with core elements of the state project (for instance, disseminating religious education that challenges secular democratic government). The minority, moreover, could also reconfigure the terms of the equilibrium. For example, instead of cultural autonomy and political unification, as envisioned in the Minority Schools in Albania case, a minority could decide to opt out politically, culturally, and economically, living in isolation from the majority institutions. A minority could also drop out culturally but still seek to influence the public sphere, or withdraw politically but mobilize the illegal economy, etc.262

260. See generally Interpretation of Convention Between Greece and Bulgaria Respecting Reciprocal Emigration (Question of the “Communities”), Advisory Opinion, 1930 P.C.I.J. (ser. B) No. 17 (Jul. 31).
262. For example, in place of using language to reflect identity (as envisioned in the Upper Silesia case), individuals could follow a different logic in making decisions about language of instruction. One dissenting judge in the Upper Silesia ruling pointed out that Polish parents who realize that their child “will automatically learn Polish, the language of the country,” can wish “for practical
The case law incentivized a minority to either completely opt out or completely assimilate into the state’s cultural life. The law offered no incentives for a partial collaboration designed to generate a new joint collective “essence” that would reflect the interests and needs of both people—the sort of model embraced by the Alliance. The Alliance had generated a dual system of political loyalties: a positive commitment to a transnational religious community that called for joint action on the basis of obligations transcending land, combined with the rights and obligations of individual citizenship, structured as a legal bond with the state. But the new system defined no legal instruments or conceptual space to accommodate a transnational network that sought to collaborate with states across boundaries and to support the needs and interests of its members while also promoting loyalty to the political identity of the state.

The new political reality on the ground was that exclusive occupation of land became essential for a people to claim the power to control their own destiny. The transnational ethnic and/or religious network was no longer permitted to exercise political powers across territories. In a system that rooted the binding force of the law in territorial sovereignty, the network was dispossessed of legal status. A prominent international scholar explained in 1925 that claims of legal rights by non-state people are “internationally unrecognized.”

The legal regime that was born after 1919 and institutionalized by the PCIJ in the 1920s and 30s presented the Jews, like all other ethnic and/or religious minorities, with the same two choices that are today open to minorities that seek to maintain their distinct culture as an ethnic-religious self. One on hand, they could repress political aspirations and enjoy the rights of a “minority” with some poorly defined cultural autonomy under the framework of larger political representation through their host states. This type of cultural independence is confined to the private realm within territorial state borders and includes an unspecified measure of freedom over schools and other culture-building institutions. Alternatively, those who did not want to give up formal political independence could

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reasons to have him instructed in the German language in a minority school.” Rights of Minorities in Upper Silesia, 1928 P.C.I.J. at 64.

battle to establish exclusive control over territory. Under the new order, securing group rights and group political power required territorial self-determination. As Headlam-Moreley explained in 1919:

[I]f there was to be a Jewish nationality it could only be by giving the Jews a local habitation and enabling them to found in Palestine a Jewish state ... any Jew, however, who became a national of a Jewish State would naturally ipso facto cease to be a Polish citizen.\(^{264}\)

This is the paradox of the Alliance's role in the Paris Peace Conference. Organized as a network and without formal political power, the group was nonetheless able to mobilize the normative power of international law to enact measures both to protect the status of Jews in the newly formed states and to guarantee the independence of Jewish cultural institutions (the locus of its own transnational form of political power). However, in exploiting international law, the Alliance also took part in recognizing the primacy of the territorial state form and codifying a formal legal framework that would render its own network mode politically invisible and legally powerless.

At Versailles, the leaders of the Alliance joined representatives of other networks (some seeking territory and some not),\(^{265}\) as well as modern states and decaying empires. Out of this variegated cultural and political landscape, only the state emerged as a sanctioned form for the political organization of human community. The law provided the meanings and narratives that authorized the state as the normative form of organizing ethnic and/or religious political identity, denied

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264. Young, supra note 189, at 137.

legal reality to the network, and simultaneously justified this status as an *a priori* natural fact.

### III. THE DECLINE OF THE ALLIANCE IN A WORLD OF NATION-STATES

The triumph of statehood as a political principle and the consolidation of power within territorial parameters that occurred in the aftermath of World War I were not lost on either the Muslim world or the Jewish people. Increasingly, the transnational political model of the Alliance came under attack, both from within the Jewish community and from without. This section surveys the transformations in legal structures and attitudes that squeezed the Alliance out of existence. It starts with an examination of changing laws in one representative location—Turkey, an important center of Alliance operations. During the transition to statehood, Turkey enacted a series of laws that upset the equilibrium between the state and minority populations—an equilibrium that had been remarkably stable under Ottoman rule. This created an environment that was increasingly inhospitable to ethnic or religious minorities, and ultimately turned inimical to the survival of the Alliance. This section continues with an analysis of the shifting loyalties of Alliance students and the rise of Zionism.

#### A. THE TURKISH REPUBLIC AND MINORITY SCHOOLS

Upon the establishment of the Republic, the Turkish government immediately embarked on a process of unification, following the French Jacobin model in the construction of a state apparatus that tolerated no intermediaries between the citizenry and the state. As the Turkish state became more assertive within its physical boundaries, it increased its efforts to nationalize all groups under its rule. In order to create a unified citizenry, Turkey broke away from the long tradition of the *millet* and extended state control over the cultural field.

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266. See Niyazi Berkes, *The Development of Secularism in Turkey* 477 (1st ed. 1964) (tracing the idea of the unification of the educational system to the elections of 1923).

267. *Id.* at 477-78 (suggesting that secularizing education impacted politics and the legal system in addition to the educational system).
Under the terms of the Treaty of Lausanne (1923), which led to the international recognition of the new Republic of Turkey, the state granted cultural autonomy to the Jews and other minorities. Article 41 Section III of the Treaty, Protection of Minorities, guaranteed the minorities an exception from state schooling requirements, granting them the right to control education and provide schooling in their own language. But through a series of laws that the Republic passed in its early years, Turkey slowly extended state control over education to include minority schools, closing off the space for the Alliance to collaborate with the state in educating Jews.

In May 1923, the Turkish Ministry of Education made the teaching of Turkish language, history, and geography compulsory in all the non-Muslim schools. These subjects had to be taught in Turkish by "pure Turks" appointed by the Ministry. The "pure Turk" teachers received a salary set by the Ministry which was substantially higher than regular teachers, resulting in a heavy financial burden for minority schools. The state also increased its administrative oversight over minority schools. In 1923, for instance, two inspectors from the Ministry of Education challenged the operation of Alliance Schools in Edirne, a dispute that the governor of the region used to close down all the Alliance schools in the area.

269. Id. art. 37-45.
270. Id. art. 41.
271. See RODRIGUE, supra note 61, at 171.
272. See RODRIGUE, supra note 22, at 273 (quoting the notice from which people were made aware of the new language requirements).
273. RODRIGUE, supra note 61, at 163 (noting that Muslims were viewed as "pure Turks").
274. Id. (comparing non-Muslim and Muslim schools); RODRIGUE, supra note 22, at 271 (illustrating the gap in wealth between the national and Alliance schools).
275. RIFAT N. BALI, CUMHURIYET YILLARINDA TÜRKİYE YAHUDİLERİ: BİR TÜRKLEŞİRME SERÜVENİ 1923-1945 [REPUBLICAN TURKEY MURDERED THE
A year later, in 1924, the Turkish state banned the Alliance schools from maintaining any links with "foreign organization[s]."\textsuperscript{276} This law prevented the Jewish network from directing its schools in Turkey from the organization’s center in Paris. From this point on, the Alliance schools could only be managed and run locally from Turkey, effectively ending the legal existence of the transnational Jewish network in that country. Later in the same year, Turkey presented the Alliance schools with an ultimatum: the schools could use as their language of instruction either Turkish or the Jewish national language, which the Ministry of Public Instruction declared to be Hebrew. French, the language of instruction in the Alliance schools in the Ottoman Empire for the past 60 years, was no longer a possibility in the new Turkish state. Since Hebrew was not a living language at the time, the Alliance schools could only choose Turkish as the language of instruction. With this law, Turkey compelled the Jews to place themselves within the framework of a national identity—Turkish or Zionist—and closed down the possibility of a transnational Jewish political identity. "Given the impossibility of adopting Hebrew," wrote the Alliance director, the authorities knew that the schools would have to "teach in the official language: that is to say, Turkish."\textsuperscript{277} "The substitution of Turkish for the French language," he concluded, "resulted with the destruction of the homogeneity" of the Alliance’s transnational form of identity.\textsuperscript{278} The Jewish community in Turkey took the only option available—the adoption of Turkish as the language of instruction in the Alliance schools.\textsuperscript{279} This meant that the Alliance could no longer use its traditional cadre of teachers, who were foreign to Turkey and did not speak the language.\textsuperscript{280} By the end of 1924, the Alliance schools used Turkish as their language of instruction, were managed from Turkey,

\textsuperscript{276} RODRIGUE, supra note 61, at 171.
\textsuperscript{277} Id.
\textsuperscript{278} Id.
\textsuperscript{279} This section builds on Aron Rodrigue, From Millet to Minority: Turkish Jewry, in PATHS OF EMANCIPATION: JEWS, STATES, AND CITIZENSHIP, supra note 67, at 238, 257-58.
and employed only Turkish teachers.

Furthermore, in 1925-26, non-Muslim groups in Turkey were forced to renounce those clauses of the Lausanne Treaty which gave them pockets of cultural autonomy. As a result, the Jewish community became a strictly voluntary confessional association within Turkey, and no longer had the right to maintain its separate private schools. Turkey granted the Jewish community five years to complete the transition of its schools to state control. By 1929, the Alliance schools had been totally nationalized and co-opted into the state; the schools followed the state curriculum, with the exception of a few hours devoted to Jewish religious studies. Education was provided in Turkish and all teachers were Turkish citizens. Finally, starting in 1931, no Turkish citizen was allowed to attend a foreign elementary school. This gave birth to a unified national elementary education system in Turkey, finalizing the state monopoly over education.

B. THE RISE OF ZIONISM AND THE DEMISE OF THE ALLIANCE

The Alliance was not only under attack from without, but it was also losing support from within the Jewish community. The gradual disenchantment with the Alliance and turn toward Zionism is discussed in this section first through the personal view recorded by Albert Memmi, an Alliance alumnus and prominent Sorbonne-educated sociologist, and second through an historical examination of the encounter between the Alliance and Zionist leaders in Versailles (1919).

While the Alliance called for Jewish assimilation into the larger society, Memmi, who like the majority of Tunisian Jews, grew up in the ghetto, found that Tunisian society denied its native Jews any meaningful space for social inclusion. “Never, I repeat, never . . . did the Jews in Arab lands live in other than a humiliated state, vulnerable and periodically mistreated and murdered, so that they

281. For a recounting of both why Turkish Jews were forced to renounce the clauses of the Lausanne Treaty, which gave them pockets of cultural autonomy, and how they became legally ineligible to educate their own people in Turkey, see RODRIGUE, supra note 61, at 171.
282. Id. at 164.
283. Id.
should clearly remember their place.”284

After independence, Jews could join the state as citizens, but the nationalist atmosphere in Tunisia did not allow them any real opportunities for participation in the political processes of the country. In this reality of “emancipation without liberalization,”285 assimilation was impossible: “[I]n order to be assimilated it is not enough to leave one’s group,” Memmi explained, “but one must enter another.”286

The Alliance education had taught Memmi to think of himself as a Frenchman. This education was so complete that he learned that “[h]e and his land” were “nonentities or exist only with reference to the Gauls, the Franks or the Marne.”287 Even his “interior monologues” were “in French” and when he spoke to himself “in dialect” (Arabic) he always had “the strange impression . . . of hearing an obscure and obsolete part of [him]self, so forgotten that it [wa]s no longer native to [him].”288 Indeed his Alliance years taught him that he, “the son of an Italian-Jewish father and a Berber mother”289 belonged “neither to [his] family nor to [his] religious community”—he “was a new being,”290 and this new person was French.

Yet, upon adulthood, Memmi discovered that France would not let him in. Memmi’s suspicion of France was ultimately confirmed by the events of World War II:

Once I had overcome my rage against Vichy, the numerus clausus, and the Fascist Legion, I began to doubt the treason of France. To accept it would indeed have been unbearable. All my ambitions, my studies, and my life were founded on this choice. How much would I have to uproot in myself now? What would be left of me? It was in this dreadful moment that I finally caught a glimpse of my ruin. If I rejected what I was becoming would I be able to return to what I had been?291

284. ALBERT MEMMI, WHO IS AN ARAB JEW? 7 (1975).
286. MEMMI, supra note 113, at 124.
287. Id. at 105.
289. Id. at 113.
290. Id. at 230.
291. Id. at 315.
In the face of the exclusion from Tunisia and the abandonment by France, Memmi discarded France: "I would never be a Westerner. I rejected the West . . . I had rejected the East and had been rejected by the West. What would I ever become? What was my future?"

For Memmi, this ambiguous identity entailed a "twofold liability, a twofold rejection." Indeed, there was no way out of "the split in myself"—he could not turn back to the traditional Jewish patterns of identity, nor could he fully integrate into French or Tunisian life. He, like other Jews of the Islamic world, was trapped in a social order in which he had no place, in the "specific Jewish fate [that] makes the Jew a minority being; different, separated both from himself and from others; a being abused in his culture and in his history, in his past and in his daily life—in the end, an abstract being." Memmi concluded that the "Jewish condition was an impossible condition . . . I define an impossible condition as a condition which can have no solution in its actual structure."

In this wilderness, Zionism promised the only way out and an opportunity to enjoy a more complete life, to become a member of a unified body with institutions, traditions, and narratives.

Since the nation is still the most effective historical form, the Jew must adopt this form to rid himself of the oppression and live as a normal people among other peoples. The nation is not a preliminary, it is an ending . . . Only the territorial solution, a free people on a free territory—a nation—is an adequate solution to the fundamental and specific deficiencies in the Jewish condition . . .

At the same time that Alliance students and alumni, like Memmi, were increasingly turning to Zionism as a solution, the Alliance also lost its legitimacy to represent world Jews at international gatherings. This development is exemplified by the open conflict with the Zionist movement that erupted on the eve of the Peace Conference in 1919. In Paris, the Zionists, themselves still a minority within the

292. Id. at 321.
293. Jean-Paul Sartre, Introduction to MEMMI, supra note 113, at xxii.
294. MEMMI, supra note 284, at 30.
295. ALBERT MEMMI, PORTRAIT OF A JEW 320 (1962).
297. Id. at 288, 294.
Jewish people, attacked the Alliance for having no legitimacy within the Jewish world to speak on their behalf. The Alliance was not a democratic body; indeed the Secretary General of the Alliance, Jacques Bigart, wrote: “We have never thought of instituting . . . any system of voting whatsoever.” But by 1919, and after six decades of advocating for the Jewish community, the oligarchic nature of the Alliance was no longer perceived as legitimate within the Jewish world. The Zionists argued that the Alliance was not accountable to the masses of Jews and had no qualifications to represent the Jews. Indeed, Nahum Sokolov explained, “their credentials consist of their election by the Jewries to which they belong.”

Most of the Zionist leaders—like the majority of world Jews in 1919—came from Eastern and Central Europe. They understood themselves to be, and presented themselves to others as, a democratic body that spoke “the mind of millions of Jews whom you will never see and who cannot speak for themselves.” Moreover, they were the party “most nearly concerned” with the issue of minorities and they approached the topic “with more knowledge” of what the Jewish masses wanted. And what the Jews wanted was to be recognized as an independent political entity. “The Jews,” Chief Rabbi Osias Thon, the Zionist leader from Krakow, declared, “are a nation,” not “a religious sect,” or a cultural minority with private rights within the framework of their territorial state. Moreover, they also “wish the world to know it.” At a raucous public meeting between the two groups in 1919, Nahum Sokolov yelled that the days of the “grand dukes” were over and “their charitable traditions were no longer applicable.” The Jewish masses, he concluded, were now “in the saddle.” Thon echoed Sokolov by looking at the Alliance representatives and asking, “Why should we deal with the dead elements?”

298. JANOWSKY, supra note 125, at 286.
299. Silberman, supra note 23, at 38.
300. LEVENE, supra note 152, at 270.
301. ANDELMAN, supra note 132, at 87 (quoting Weizmann).
302. JANOWSKY, supra note 125, at 295.
303. Id. at 301.
304. Id.
305. LEVENE, supra note 152, at 269-270
306. Id. at 270.
307. JANOWSKY, supra note 125, at 294 n.35 (referring to the fact that the
Despite the various forces driving world Jewry toward Zionism, the Alliance continued to question the practicality of a territorial solution. Indeed, the discussions between the Alliance and the Zionists in the crucial moments at Versailles were extraordinarily prescient. Lévi predicted that Zionism would be dangerous because those who are seeking shelter in Palestine “come from countries where they have been subjected to a treatment that one can only describe as terrible” and as a result, they “carry passions which I shall dare to describe as explosive, and which risk producing grave troubles.”308

Jacques Bigart continuously reminded the Zionist leaders of their own blindness to the reality in Palestine. He prophesied that the revival of a Jewish homeland in Palestine was not a sustainable option, with the land being home to a native Muslim population and Arab nationalism spreading across the Muslim world:

Palestine has fewer than 100,000 Jews and 500,000 Arabs. The government of the Entente pride themselves [sic] on allowing national self-determination, is it allowable, under these conditions, to have the majority governed by a small minority? . . . They also say, “today we are a minority,” but in x years by means of immigration we shall be a majority. Having regards to the Arab awakening to which the Entente gives support, and which tomorrow perhaps will play an important role in the Asiatic provinces of Turkey, is there not great danger in confronting it with a politico-national “Judaism,” the followers of which are recruited abroad (and in what circles)! This is the point of many Frenchmen who are very favorable towards the Jewish elements but who, having studied the Arab problem, observe an incompatibility between Zionist demands and the ambitions of the prominent leaders of re-awakened Arabia.309

At the same time, the Zionists accused the Alliance of being blind to the mortal threat of European anti-Semitism. The Zionist leaders predicted in 1919 that even if Jews obtained equal rights in their states of residence, the Jewish question would remain “just as burning”310 and the Alliance’s political solution was not adequate to

Americans were no longer advocates of creating a Jewish nation but still attended the meeting).

308. IB THE LETTERS AND PAPERS OF CHAIM WEIZMANN, supra note 97, at 228.
310. Notes of Meeting Held on Thursday February 8th 1917 at the Residence of Sir Mark Sykes, 9 Buckingham Gate, London, Eng. (Feb. 8, 1917) (on file with
protect Jewish life. In ignoring the impossibility of a secure Jewish life in Europe, the Zionists argued that the Alliance was betraying the Jews spectacularly. 311

A century later, we know that both the Alliance and the Zionists were right. The Alliance correctly foresaw that Zionism would condemn Jews to racial separation, not only splitting them off from the rest of the world but also excluding Palestinian Arabs from the benefits of the nation. Similarly, the Zionists were right to denounce the Alliance for naïve faith in the protection afforded by European states and for operating at times as an arm of French imperialism. The network form did not offer an adequate solution for preserving Jewish life, and its “universalism” was never fully differentiated from colonialism. Neither the network nor the state form on its own provided a sufficient solution for the challenges facing the Jews, and in many ways the history of the struggle between these two approaches is also the story of the predicament of our present nation-state system.

CONCLUSION

This article has used two intertwined stories to trace the evolution of the transnational ethnic/religious network and its status under international law. The examination of the Alliance was intended to provide depth and meaning to the political potential of the network form for organizing ethnic/religious identity. This work focused on the capabilities inherent in education and suggested that the story of the Alliance demonstrates how a people can mobilize control over a network of minority schools to enact their political self. Not only do the schools generate shared political orientations and particular codes of participation, but they also are able to supply basic services akin to those of a welfare state, acting in some ways as a surrogate government within the community. The form of identity promoted by the network is practiced in relationships which support and enable or reject and impede external structures of authority, rather than being based on territorial state institutions. The resulting community is geographically disparate but culturally and politically coherent. For the Alliance, the network structure was a conscious preference, not a

American University International Law Review).
311. IB LETTERS AND PAPERS OF CHAIM WEIZMANN, supra note 97, at 236.
temporary or second-best pick. The choice of this form for the organization of a group’s political self challenges the assumption that the territorial state is the intrinsic and natural inclination for all ethnic/religious communities.

The story of the Alliance indicates that, despite widely held assumptions to the contrary, networks are not a new phenomenon emerging in our current era of globalization, but have in fact been with us for over a century. It further suggests that existing scholarship on networks has an overly narrow view of the capabilities of the form. Scholars often assume that only the state plays a role in “imagining” and constructing national-political identity, but the case of the Alliance demonstrates that a network can also be used to organize a people and to satisfy national or quasi-national aspirations outside the frame of a territorial state. Moreover, contemporary scholars of networks often presume that the rise of networks indicates a disaggregation of state power, but this case illustrates that the relationship between the network and the state can be more complex and embedded. The two strategic modes of organization can both support and compete with each other, frequently at the same time, suggesting that neither form is wholly independent of the other. This article argues that the ensuing interaction is unstable and leads to unpredictable results: the relationship transforms in time and space in response to external developments.

Second, this work told the story of when and how statesmen, international lawyers, scholars, and judges mobilized the language and power of the law to explicitly exclude the transnational network from legal status and political visibility on the international realm. This split is not a deduction from natural principles, but rather was invented by the policymakers and international experts who gathered in Paris in 1919 and codified the two-sided legal regime of the Minorities Treaties and the Peace Treaty. I analyzed the social, cultural, and political contexts that informed their specific choices and actions. The consolidation of a political system centered on territoriality cast the network as politically deviant and obliterated the complicated and intertwined relationship between the territorial and the transnational modes of organization. This manufactured dichotomy between the state and the network makes it difficult for us today to understand either institution as a whole. My reading of
history suggests that the common dictum that “states make the law” is too simple: at Versailles in 1919 the converse was also true, as the state emerged as the dominant political form in part as a result of the international legal discourse of the time.

The legal regime for the international protection of minorities established in 1919 was largely abandoned in the aftermath of the Nazi takeover of Czechoslovakia in 1938-9, which was abetted by the local German minority. Of the dual legal precepts enshrined at Versailles, self-determination and minority rights, only self-determination survived in the post-war international legal order. The Minorities scheme disappeared and gave way to doctrines and institutions for the protection of individual human rights, most notably the Universal Declaration of Human Rights (1948).312 The abandonment of the Minorities regime was also reflected in case law; cases dealing with schooling as a collective right of minorities appearing in front of the PCIJ gave way to cases concerning education or religious freedom as individual rights, argued in front of human rights bodies. The latter are narrower and more technical cases that do not directly address the potential of education in nation building.

Yet the Minorities protection regime remains embedded in our international system. Indeed, the rights of minorities were never legally repudiated; they have simply been largely ignored. Conceptually, the international legal categories of identity that were generated in 1919 still shape how we understand the players in nationalistic conflicts to this day. In a series of articles, Nathaniel Berman has described the “striking resurgence” of the notions of “minority rights” since the fall of the former USSR and the fracturing of Yugoslavia.313 This renewed interest in the legal structure of the minority is evident in treaties such the 1991 Draft


The exclusion of the network from international legal personality and the abortive effort to define a protected minority class within state borders have left us without any legally-meaningful structures that occupy the space between the state and the individual. Indeed, even today, almost 100 years after the drafting of the Minorities Treaties, we still lack both a precise legal definition of “minority” and an understanding of the relationship between a national minority and a transnational ethnic or religious people. This void has significant consequences. Without legal recognition of a national stance outside statehood, the law is conceptually unable to grapple with a transnational ethnic-religious people that organize themselves as a political entity but that explicitly reject territorial content and state institutions. The lack of this middle structure may push ethnic-religious people to take more extreme positions, either dropping out completely from the existing international order or pursuing a nationalist agenda and challenging the territorial status quo.

Neither the scholars nor the institutions of international law have the legal language or conceptual tools needed to fully engage with the problem posed today by violent transnational religious networks. We have only the mechanisms of the state system—military forces and criminal justice systems—but these approaches can be poorly suited to the political challenge raised by such groups. And, interestingly, concerns about education are once more at the forefront, as many of these groups have some relationship to schooling networks spread across state boundaries and have used

314. Indeed neither the United Nations Charter nor the 1948 Universal Declaration on Human Rights includes reference to minorities. The only legally binding text which refers specifically to minorities—albeit without defining them—is Article 27 of the 1966 International Covenant on Civil and Political rights. The Article provides general recognition of limited minority rights: “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 practice their own religion, or to use their own language.” International Covenant on Civil and Political Rights art. 27, Dec. 19, 1966, 999 U.N.T.S. 171. For more on the lack of definition of a "minority," see Jelena Pejic, Minority Rights in International Law, 19 Hum. RTS. Q. 666, 667-75 (1997).
these schools as one mechanism for constructing and propagating their network organization.

Both the recent return of the concepts behind the Minorities regime and the renewed focus on cross-border networks of religious education have left us grappling with many of the same issues that were addressed, or ignored, in the PCIJ cases from the inter-war era. It is therefore valuable to recover the history of that period and examine its legacy. Perhaps the most significant lacuna in this existing body of case law is the failure to recognize the limits of the Minorities regime in resolving conflicts between the minority and the state that are essentially political in nature. The principles of "equilibrium" and of cultural freedom within the private sphere are appealingly even-handed in the abstract, but it is seldom clear how these general principles should be applied to real disagreements in which the interests of each side come into a genuine conflict. Martti Koskenniemi has written of a similar difficulty with the principle of self-determination:

"It is a paradoxical characteristic of a generally formulated right or a principle such as "self-determination" that, stated in abstracto, seems to convey a value that most people will immediately endorse. The more concrete it is made, however—that is, the more it is applied as a right of this or that entity—the more controversial it starts to appear, with the result, finally, that it becomes useless when it seems most needed: in a dispute about the boundaries of a particular "Self" against another. The more, in other words, juristic discussion turns away from affirmations of the abstract principle to particular cases of application, the more it seems necessary to have recourse to an evaluation of the particular character or practices of those communities (including their self-identification principles and the manner in which they proceed to fulfill their goals) whose boundaries have become overlapping."

I end the Article with two of the dissenting opinions from the PCIJ cases, which highlight the difficulties inherent in this attempt to formalize blanket minority protections within a system that is fundamentally constructed on state sovereignty.

In its dissent in the Minorities School in Albania case, Sir Cecil Hurst, Count Rostworowski, and M. Negulesco captured the flaw in

the decision's description of an idealized equilibrium in which the minority and the majority pursue their separate cultural identities in peaceful coexistence. They explained that the "elusive" "perfect equilibrium"\textsuperscript{316} ignores a fundamental clash between two conflicting principles:

[T]he question whether the possession of particular institutions may or may not be important to the minority cannot constitute the decisive consideration. There is another consideration entitled to equal weight. That is the extent to which the monopoly over education may be of importance to the State. The two considerations cannot be weighted one against the other: neither of them—in the absence of a clear stipulation to that effect—can provide an objective standard for determining which of them is to prevail.\textsuperscript{317}

For this judge, the resolution of conflict lies outside the realm of the law: it must be reached through political, not legal, channels. He suggests in this case an examination of the intention present at the moment of signing the Minorities Treaties "representing the common will of the parties."\textsuperscript{318} In every specific case, it is political considerations, not legal ones, that determine whether the minority or majority triumph.

The dissent opinion in the \textit{Rights of Minorities in Upper Silesia} also despaired of finding legal solutions to conflict between minority and majority interests. Judge M. Nyholm explained that since the nature of the identity of the minority "cannot be disputed or verified" by the host state, it "is entirely unimpeachable," "cannot be limited by rules of law" and "comes solely within a moral sphere."\textsuperscript{319} Instead of recourse to law in moments of conflict, we must resort to the "good faith" of both the minority and the majority.\textsuperscript{320}

As the legal notions first developed in the Minorities Treaties have now returned to currency, the shortcomings revealed in the case law

\begin{itemize}
\item \textsuperscript{316} Minority Schools in Albania, 1935 P.C.I.J. at 26-27.
\item \textsuperscript{317} \textit{Id.} at 27.
\item \textsuperscript{318} \textit{Id.} The dissent referred to the letter of Prime Minister Clemenceau (mentioned earlier) explaining the intention of the Minorities Treaties in order to argue that, in cases of a clash, the intention of the Treaty was to privilege the state over the right of the minority.
\item \textsuperscript{319} Rights of Minorities in Upper Silesia (Minority Schools), 1928 P.C.I.J. (ser A), at 63 (emphasis added).
\item \textsuperscript{320} \textit{Id.} at 66.
\end{itemize}
of that era can provide valuable direction to those crafting new policies today. In seeking to apply the framework of minority rights to provide a workable political structure that can resolve tensions between a state and a minority, it appears that we will need to examine each case in its unique particularities and specific factual context. For example, when dealing with a conflict involving minority schools, it may be necessary to specify from the outset not only the abstract legal principles of minority protection but also such details as the structure and content of the curriculum and student eligibility and requirements for attendance.

A larger lesson of the history recounted in this article is that conflict between minorities and states on questions of identity and autonomy is not always inevitable. The example of the Alliance demonstrates the potential for minority groups to pursue their own cultural and political ends through network entities in a fashion that can interact in a supportive way with state structures. Such projects can flourish in legal contexts that provide sufficient flexibility to enable their operations, but they largely disappeared from view after World War I as a result of rigid formalization of the international legal system and aggressive nationalism within states. The loss of the network mode as a recognized political form for ethnic/religious groups has reduced the number of tools available to the international community for meeting the needs of minority populations for political advancement and socio-economic development.

Revisiting the historical trajectory of the relationship between minorities and states can lead us to a better understanding of the nature and operation of ethnic/religious networks, as well as the legal and political choices which underlie and constrain our present system of international law. As we seek now to build upon the conceptual foundations we have inherited, the efforts of an earlier generation of community leaders, statesmen, policy makers, and international legal experts should both inspire us with their legal creativity and caution us to the complexities of human identity.