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1   The term *Nationalstaat* (nation-state)

What Lopera Mesa has reported about was the history of the language policy of a kind of state known in German as 'Nationalstaat' / 'nation-state'. In the following, I would like to show the language policy of a non-nation multi-ethnic state. If we compare Colombia and Austria with regard to language policy, this exactly is the crux of the matter: The first was a national state, while the latter was the counterpart of a nation-state, which means a multi-ethnic state.

Indeed, I am dealing only with "Österreich-Cisleithanien". Cisleithania was the western one of those two states which came into being in 1867, when the Empire of Austria was divided into two nearly independent parts: The Kingdom of Hungary (including Croatia and Transylvania) on the one hand and Cisleithania on the other, including all other parts of the former *Kaisertum Österreich* not belonging to Hungary. It was only the Cisleithanian half of the Austrian-Hungarian Monarchy that was considered a 'Vielvölker-staat', whereas the Kingdom of Hungary, i. e. the eastern half, erected itself in a very strong way as a nation-state like most other states in Europe.

Some remarks about the term 'Nationalstaat' are indispensable here, since the meaning of this term is anything but clear.[1] That goes for the German term itself but even more for the English translation 'nation-state'. The problem is that there is hardly a clear differentiation between 'state' and 'nation' in the English language. In English, both terms are very close to each other. To give any example: "National railways" are railways run by the state, 'nationalizing' an enterprise means that it is taken over by the state. In the German language, the difference between 'state' and 'nation' is much deeper than in English. In German, the term 'nation' is far away from any

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1 Stauber (2008).

state, but rather it means a group of people who define themselves as related by virtue of a common language, culture and history. Affiliation with a 'nation' is completely independent from any state-citizenship. On the other hand, the German term 'Nation' is close to the term 'Volk'. It is the term 'Nationalstaat' which connects 'Nation' and 'Volk' on the one side with the state on the other: A nation-state is a state, the identity of which is characterized and determined by the culture and the language of one nation. That said, 'nation-state' does not at all mean that it need be completely ethnically homogeneous. Ethnic and linguistic diversity in one state do not rule out its character as a nation-state. Even in a nation-state, there may well be minorities. The decisive points are whether and to which extent a nation is successful in asserting itself as a state-bearing nation and in imposing its own cultural identity on the state. This, of course, is, in the first place, a question of majority relations: usually the majority nation is also the state nation, so defining its language and cultural identity.

With this in mind, it cannot be surprising to read Colombia described as a nation-state even though a large number of different peoples with different languages live within its borders. Colombia was a nation-state with a clear national identity based on the Spanish language, which was the undisputed state language, and a Hispanic cultural heritage "without any traces of the racial, cultural, and linguistic background of indigenous peoples". The "paradigm shift from assimilationism toward multiculturalism", which Gloria Lopera-Mesa is reporting about, did not take place before the 1970s.

In contrast, Austria-Cisleithania was the exact opposite of a nation-state. None of the many nations inhabiting it was in the absolute majority. Although the Germans were the relatively strongest nation (1877: 36.2 %),[2] they represented only a minority compared with the totality of the Slavic nations. Cisleithania was a state without an ethnic majority; all citizens belonged to a minority, and none of them could regard Cisleithania as their own nation-state. In this sense, Austria-Hungary was truly unique in Europe, and it was accordingly marvelled at seven more in the political world, as completely unlike the type of nation state that seemed to prevail in Europe.

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2 Czechs and Slovaks: 22.5 %; Ukrainian: 12.8 %; Polish people: 12.1 %; Slovenians: 5.6 %; "Israelites": 4.1 %. Kann (1964) 390.

In the 19th century, many people were rather sceptical and concerned about the future of the Austrian multi-national state. In contrast, today very often pure enthusiasm arises when speaking about the Austro-Hungarian Monarchy, which is often – rather rashly indeed – held up as a predecessor of the European Union in East-Central Europe. It is usually ignored here that Austria-Cisleithania struggled with problems that would not have arisen in the first place in a nation-state. Leaving aside the most elementary problem – integration – I shall focus on one point which is closely related to the problem of integration: language.

2   The problem of state language

As a consequence of its multi-ethnicity, Cisleithania was a state without a unitary state language,[3] and was thus unique in Europe. To put it more clearly and comprehensibly, Cisleithania was a state where the actual and more-or-less generally accepted official language was increasingly discussed towards the end of the 19th century. In consequence, the "language dispute", as it was known, grew into one of the most serious, not to say most dangerous, internal political problems of Austria in the last decades of the Monarchy,[4] not least since it was extremely emotionalized.[5] Indeed most German Austrians perceived it as a symptom of a dangerous disintegration of the state.

If we go back to the end of the 18th century, we find that the German language had, in fact, been something like the official language of administrative authorities and courts throughout the whole Austrian state.[6] This went even for such Crown Lands as Bohemia and Galicia, where a uniform Czech or Polish official language had, in practice, existed in the 16th century, when these countries got apart of the Habsburg Monarchy.[7] In particular in the Bohemian lands (Bohemia itself, Moravia and Silesia) the enforcement of a general German official language had been part of an absolutist policy of unification and centralization that created as a result the Austrian unified

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3 Stourzh (1989) 257.
4 Haslinger (2008) 81.
5 An impression from that gives Hamann (1996).
6 Stourzh (1985) 84.
7 Schaffgotsch (1906) 371 f.

state in the course of the 18th century.[8] Only in Hungary did the Habsburg state fail in its attempt to institute a unified and centralized state with a unifying German official language.[9]

On the other hand, however, the primacy of the German language was also the result of the fact that German was the language of education and culture throughout Central and Eastern Europe, and recognized as such by the Slavs and, to a large extent, the Hungarians, it had to be mastered as a sign of membership of the upper and educated classes. It was, so to say, the transnational lingua franca of all educated people in Central and Eastern Europe.[10] Additionally, German was also the language of the imperial family. Only in the Mediterranean ex-Venetian Crown Lands (Venetia, Istria, Dalmatia[11] and Trieste) was there a special situation, since Italian had a very old tradition not only as the language of the social and political élites but also as an official language in the late medieval and early modern states of Italy.[12]

With the rise of Slavic national movements, however, the traditional out-of-hand acceptance of German as a state and administrative language began to fade. It became a symbol of German dominance and hegemony over the Slavs, in clear contradiction to the principle of equality of nationalities, which, historically, had been closely associated with constitutionalism in Austria. This is not least evident in the fact that this principle had been included in all constitutional texts since the "Kremsierer Draft", especially prominent in the "December Constitution" of 1867.[13] Article 19 *Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger*, affirmed that the "equality of nationalities" was guaranteed, and, accordingly, every nationality had "an inviolable right to preserve and maintain their nationality and language". The same provision explicitly affirmed "equality of all national languages in schools, ministries and public life". However "equality of nationalities" meant, of course, equality of languages and thus the tradi-

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8 HASLINGER (2008) 82–86.
9 HASLINGER (2008) 88.
10 SUTTER (1980) 154; HASLINGER (2008) 92.
11 On the language dispute in Dalmatia: KALWODA (2017).
12 STOURZH (1985) 84.
13 STOURZH (1989).

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tional primacy of the German language was already being challenged. In response, the Germans sought to secure the traditional primacy of their language by way of (constitutional) legal stipulation. The issue reared its head for the first time at the preliminary stage of drafting the December Constitution of 1867, when the German Liberals tried to establish the role of the Germans as the 'ruling nation' in Cisleithania[14] It was in this context that the first initiatives arose to amend the December-Constitution with a regulation that would fix the German language as the state language of Cisleithania.[15] The representatives of the German Liberal Party proclaimed German as the state language, arguing that every civilized state would require a unifying state language. Otherwise, the "state would be dissolved into atoms". From the perspective of the German Liberals, it seemed to be evident that only the German language could be considered as the state language of Austria-Cisleithania, since German was the "most advanced language", the "language of a highly civilized people of 40 million" and, last but not least, it was the "language of the Dynasty".[16] As is well known, this attempt failed because of the resistance of the Slavic nations within Austria. The same thing happened with the numerous later initiatives to define German as the official state language of Austria-Cisleithania:[17] Under the terms of constitutionalism, the state was not able to enforce a consensus-based norm that brought even one single language close to the character of an official state language.[18]

3   "Law of languages" in Austria-Cisleithania: sources

Instead of arranging an official state language, in Austria-Cisleithania extensive efforts were made to practise an uncompromising language policy. As a result of this policy, a substantively and spatially highly differentiated Language Law was developed. It was spatially differentiated, since it developed very differently from province to province and, for that matter, from town to town.[19] It came, accordingly, from very different sources of law.

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14 Rumpler (1997) 409.
15 Stourzh (1989) 250.
16 Quotation by Stourzh (1985) 85.
17 Ableitinger (1973).
18 Stourzh (1985) 87 ff.
19 Fischel (1901).

In Austria-Cisleithania, it was not only the state that had the competence to enact statutes but also the Crown Lands (Länder), which could approve statutes in their own diets, the *Landtage*. Though Cisleithania had not the structure of a Federal State in a formal sense, it was very similar to this kind of state. In any event, the Crown Lands had the character of autonomous provinces, which could regulate the affairs of self-government by legislation passed by their own provincial diets.[20] Additionally, local communities could regulate local affairs, since they, too, had competence for self-government.[21]

Since general regulations with validity in the Cisleithanian state as a whole were hardly enforceable, the Austrian language law developed in a very different way in each province depending on its ethnic composition. As a result, the statutes enacted by the diets of the autonomous provinces were at least as important as those of the state itself.[22] Equally important, however, were the regulations issued by cities and other communities, as disputes over local language use were often decided by municipal councils. The language to be used in council meetings, in official local administrative functions or by public-transport services was regularly defined and laid down by the local authorities, since these points were considered to be under their jurisdiction. In any event, most statutes enacted by the state itself had a limited range of application (i. e. the validity was restricted to a single province). Apart from Article 19 of the Staatsgrundgesetz, general regulations applicable throughout Cisleithania were the absolute exception.

The decisive source of legal regulation concerning language disputes was, however, not the legislation, but rather the legal system. In 1867, the Cisleithanian Constitutional Court (Reichsgericht) was established as a court with the competency, among others, of ruling on alleged fundamental-rights violations. A few years later in 1876, the Administrative Court (Verwaltungsgerichtshof) was established. In these two courts, citizens in Cisleithania could claim their fundamental right to linguistic equality, as guaranteed in the *Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger* as a part of the December Constitution of 1867. The Austrian Constitutional Court was the first court in which citizens could have a case heard concerning a per-

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20 Hellbling (2003) 243 ff.; Brauneder (2012) 75.
21 Urbanitsch (2000).
22 Vilfan (1970) 5.

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ceived violation of their fundamental rights and which justified its decisions directly in terms of fundamental rights, making it, in this way, the first institutionally independent court of its kind. An analysis of the jurisdiction of this court shows that, in the vast majority of cases, the court had to deal with claims concerning language equality, far more often than with cases brought over classic fundamental rights of freedom and property,[23] With the result that the decisions of these two courts became a much more important legal source regarding language law than the statuary legislation of political bodies such as provincial diets and municipal councils. As a predominantly important source of legal norms on language use, the Constitutional Court and the Supreme Administrative Court contributed decisively to the juridification of the 'nationality dispute'.

4   Objects of regulation

Concerning the Austrian language dispute, the most important and, at the same time, apolitical and very delicate objects of regulation were situated in two areas: Firstly, there was the problem of the state language regarding each of the three state powers, i. e. the state language regarding legislation, administration and jurisdiction. Secondly, and no less delicate, was the language problem concerning the education system: Which languages should be taught to which students in the different types of schools? The latter alone could be used to produce a hefty tome. In the following, I should like to draw attention to a few aspects of the 'state language' in the narrower sense, namely the language of legislation and administration:

In the area of legislation, two language questions had to be clarified: Firstly, there was the language of negotiation, that is, the language in which the parliamentary debates should take place. That means: which languages should be used in the parliament of the Cisleithanian state, the *Reichsrat*, and which in the diets of the Crown Lands[24] and, beyond that, the municipal councils. On the other hand, it was about the language in which the statutes would be published. This, of course, had to be regulated again separately

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23 Stourzh (1985) 11.
24 On the language disputes in the diets of the Crown Lands: Rahten (2000) 1745 ff.; Krahwinkler (2000) 1873 ff.; Buczynski (2000) 1968 ff.; Malíř (2000) 2068.

regarding the statutes of the state, statutes of the diets in the Crown- Lands and last, but not least, the municipal ordinances.[25]

Even more sensitive and likely to lead to conflict was the question of the administrative language and the language used in the courts, since the daily life of the people was thereby affected much more heavily and directly. This also concerned the issue of the language qualifications of the officials: In which provinces and areas should the excellent command of which languages be a precondition for employment in the civil service? This was also a matter of resource distribution: How should the not very well salaried but secure jobs in the civil service be distributed among the various nationalities?

All this turned out to be a very difficult task. On the one hand, the state had to take into account that all nations represented in Austria wanted to be able to communicate with the administration in their own language. Additionally, the state had, of course, to take care in its own interest to ensure that its statutes and decrees were understood by all the emperor's subjects because this was the indispensable precondition for an effective implementation of those same statutes. It was therefore self-evident in every respect that all functionaries of the state on the lower administrative level should be able to make themselves understood by the citizens. On the other hand, however, the state also had to ensure a minimum of linguistic unity within the administrative apparatus so that inter-agency communication could be carried out without great difficulties. The latter is still the indispensable condition for an efficient centrally managed administrative organization.

A way out of this dilemma was sought through the regulative differentiation between "external", "internal" and "innermost" official language.[26] The "external official language" was the language which could or should be expected to be used by the citizens in communicating with the competent authority. It was the language in which they could make written submissions and in which they were informed about the decisions of the authorities. The "internal official language", on the other hand, was the language within the administration, with the exception, however, of communications between the central authorities and the subordinate authorities. For central communication processes, the "innermost official language" had to be used. This

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25 STOURZH (1985) 92 f.
26 STOURZH (1985) 100 ff.; SCHAFFGOTSCH (1906) 371 ff.

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example may indicate the extent of the normative differentiation of the Cisleithanian legal norms regulating the use of language concerning only the official language. The differentiation was further increased by the fact that there were no uniform nationwide rules for the "internal language" of the authorities. Instead, the rules varied in detail from Crown Land to Crown Land. By contrast, the "external language" of the authorities was at least in principle uniformly regulated on the constitutional level by the above-mentioned guarantee of "equal rights for all customary languages in schools, public offices and public life". With regard to the "external language" of the authorities, this led to the legal conclusion that every Austrian citizen had the right to communicate with the authorities in his own language, insofar as this language was "customary" at the respective seat of the authority. This did not, however, provide much clarity because it immediately led to the question of which language was "customary" in which parts of a particular area. As an example, it could be asked to what extent were German and Czech "customary" in Bohemia or Moravia. Would that be, moreover, in the whole of Bohemia or only in the respective German- or Czech-speaking areas?[27] What, then, about the transition zones between the Czech- and German-language areas? It was undoubtedly in Bohemia that the language dispute was most bitter and vehement, and the Cisleithanian state issued a whole set of language regulations in an attempt to regulate the issue, but nearly all of them faced great resistance from either the Czech or the German side because, by one side or the other every regulation was viewed as a modification of the status quo to the detriment of one or of the other.[28]

5   The role of autonomous provinces (crown lands / *Länder*) and local communities in the dispute over languages

The Cisleithanian state was, in fact, honestly trying to defuse the national language conflict, but this was a demanding task indeed. For starters, there was the very number of languages concerned, being at least eight main tongues: German, Czech, Polish, Ukrainian, Slovenian, Croatian, Italian and Hungarian. Then, there was the fact that the state, the autonomous Crown Lands and the local communities did not pull on the same end of

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27   Stourzh (1985) 120.
28   Sutter (1960/1965).

the rope. On the contrary, they frequently worked directly against each other. Whereas the Cisleithanian state sought to operate as an "honest broker" for the nations,[29] the provincial diets and to a no lesser extent the communities contributed to aggravating the language dispute. They often sought to enshrine the absolute rule of the language spoken by the respective majority in the city. This routinely went hand in hand with endeavouring to displace the minority languages from the public space. The communities were not infrequently the biggest culprits in this regard.[30] It is worth noting that they were relying here not only on their right of self-government but also on the relevant provision in the December Constitution (Art. 19 *Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger*), claiming a "right to national self-determination" as individuals. This often resulted in no-exceptions community language policies rigid to the point of banning any inscriptions in the public sphere (even on tombstones!) written in a language of a national minority.[31] A large number of cases that came to the courts of public law in Austria-Cisleithania, the *Reichsgericht* and the Administrative Court, dealt with language disputes between citizens and their municipal authorities because of the language policy of the latter. The Cisleithanian state could hardly intervene in this kind of conflict because legal control of the communities was not an affair of the state, but rather of the autonomous provinces in old Austria. That said, the Länder often did nothing to deescalate the language disputes in the communities. On the contrary, if the same nationality had the majority in the provincial diet as well as in the representative body of the respective community, the Länder regularly supported the aggressive language policy of the communities. It was, as a result, mainly the jurisdiction of the Reichsgericht and Administrative Court, when it came to protecting the national minorities in the communities.

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29 Stourzh (1985) 27.
30 Haslinger (2008) 105.
31 Stourzh (1985) 68.

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