

## A NON-TERRITORIAL ETHNIC NETWORK AND THE MAKING OF HUMAN RIGHTS LAW:

The Case of the Alliance Israélite Universelle

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*International legal discourse, which has traditionally been conceived as a means of regulating relations among sovereign states, reflects the parallel evolution of international law and the rise of the independent nation-state. With some important exceptions, the territorial state is still today the core actor that makes law and is bound by law. What this paper traces is the extraordinary, and largely forgotten, role played by a transnational ethnic-religious network, the Alliance Israélite Universelle. Founded in Paris in 1860, the Alliance became an influential voice in the codification and promulgation of three concepts that inform the language of modern rights discourse: (a) the notion of religious equality as a basis for the recognition of a new state (1878, at the Berlin conference); (b) the identification of religious or ethnic communities within a nation-state of alien culture as “minorities” (Versailles Peace Conference, 1919); and (c) the idea of individual human rights, embodied in the Universal Declaration of Human Rights (1948, the United Nations Charter). The history of the Alliance’s involvement in international law-making compels us to revisit the commonly-understood genealogy of international law, and to rethink the main lines of international legal history. Moreover, it speaks to ethnic-religious collectivities that do not predicate their nationhood on an intimate bond between people and land, suggesting strategies whereby significant legal and social change may be realized otherwise than by the formation of an independent territorial state, or the alternative of recourse to individual human rights.*

With the fall of the Berlin Wall and the “earthquake”<sup>1</sup> of the end of Cold War,<sup>2</sup> we see the emergence of the “era of complex, multilevel, global governance, tied together by networks.”<sup>3</sup> These international networks are of various configurations, ranging from NGOs and multinational corporations to networks of elites. The networks operate in the private realm of the market and of civil society, working across borders to address common problems on a global scale. Such transnational groups are *collective*, though usually not ethnic. They do not link their collective identity to exclusive possession of solid territory and, as a result, they lack formal political capabilities within the scope of international law. Lately there has been growing scholarly interest in the possibility of such networks taking on political roles and participating in the formulation of international norm

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<sup>1</sup> Thomas Risse-Kappen, *Preface to Bringing Transnational Relations Back*, in *NON-STATE ACTORS, DOMESTIC STRUCTURES AND INTERNATIONAL INSTITUTIONS* xi (2003).

<sup>2</sup> See generally, James N. Rosenau & Ernst-Otto Czempiel (eds.), *GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS* (1992); James N. Rosenau, *ALONG THE DOMESTIC-FOREIGN FRONTIER: EXPLORING GOVERNANCE IN A TURBULENT WORLD* (1997).

<sup>3</sup> Anne-Marie Slaughter, *Global Government Networks, Global Information Agencies, and Disaggregated Democracy*, 24 *MICH. J. INT’L L.* 1041, 1045 (2003). Slaughter, a leading scholar in the field of networks, dates the emergence of what she terms a “networked world order”: “Events over the course of the 1990s . . . cast a spotlight on a new generation of transgovernmental networks. As the bipolar state system of the Cold War disappeared and non-state, sub-state, and supranational actors rode the tide of globalization, pundits and many scholars began heralding the era of complex, multilevel, global governance, tied together by networks.” *Id.*

generating processes alongside state actors. At the same time that we live in a “networked world order,”<sup>4</sup> with states no longer the sole locus of political activity, there is also a resurgence of bitter ethnic-religious conflicts throughout the world. From Kosovo to Rwanda to Iraq, groups shed blood, and sacrifice their own people, in struggles to achieve political independence. In the face of these religious conflicts and clashes between ethnic identity and state power, we see renewed interest in the legal tools of minority rights and human rights. There have been three foundational moments in the history of these ideas: the precedent of religious freedom at the Conference of Berlin in 1878, the system of Minorities protection at the Paris Peace Conference in 1919, and the discourse of individual human rights embodied in the Universal Declaration of Human Rights in 1945. The key ideas emanating from these manifestos, systems, and discourses are invoked again as possible solutions to today’s burning nationalist conflicts.

While the political possibilities inherent in an order of civil society ruled by network actors and the correlating fragmentation of the state seem more manifest today than ever, still the configuration of a non-territorial network of self-rule is not linked up with religious-ethnic communities. Instead, two political choices seem open to dispersed ethnic minority communities who seek to maintain their distinct culture as a group: (1) some form of cultural autonomy under the framework of larger political representation through their host states, or (2) a battle for territorial self-determination. Cultural autonomy is generally confined to the private realm and falls short of political self-rule; self-determination, in turn, involves the achievement of group rights and group political power through the establishment of independent political control over territory. Thus, over and over again, we see that ethnic-religious communities are forced to make a choice: either to repress their political aspirations or to seek exclusive possession over territory.

This paper introduces the Alliance Israélite Universelle, a Jewish non-territorial network born in France in 1860, and reaching the climax of its public political powers between 1880 and 1920. The Alliance created a tangible link between elements of distinct ethnic-religious identity formation, network structure, and human rights law. The Alliance was *non-territorial* (like a transnational network) yet when constructing its group identity, the Alliance blended the characteristics that we identify with ethnic states and those that we identify with transnational networks. In this, the Alliance moved away from a fixation over land; while maintaining a dispersed physical presence, they still produced and sustained a form of Jewish group identity with transnational public-political capabilities. Although the experience of the Alliance has been largely forgotten by legal history, the group had a very substantial impact on the development of modern international legal and political institutions.

As we have seen, the Alliance midwifed three events that mark the birth of modern human rights law: 1879, 1919 and 1945. At the Congress of Berlin in 1878,<sup>5</sup> in the wake of the Russo-Turkish War, the international community established religious liberty as a basic principle of European public policy and an “established procedure” of the legal system. The Paris Peace Conference held after the First World War codified the Minorities Treaties,<sup>6</sup> legalizing a novel identity status for

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<sup>4</sup> Anne-Marie Slaughter, *Sovereignty and Power in a Networked World Order*, 40 STANFORD J. INT’L L. 283 (2004).

<sup>5</sup> 153 CTS 170 (1878).

<sup>6</sup> See, e.g., Polish Minority Protection Treaty, 225 CTS 412 (1919). For the full text of the Polish Minorities Treaty, see C. A. Macartney, NATIONAL STATES AND NATIONAL MINORITIES 510-514 (1968).

religious or ethnic communities embedded in an ethnically alien environment: “minorities.” While these minorities were denied self-determination, they became the subject of two new categories of rights: rights protecting individuals against discrimination,<sup>7</sup> and rights protecting against the cultural assimilation of the minority as a *group*.<sup>8</sup> Finally, in 1945, the Universal Declaration of Human Rights brought a renewed emphasis upon the individual and established yet another legal category: human rights, entitling all persons to be treated equally without discrimination of any kind.<sup>9</sup>

The Alliance Israélite Universelle made its presence felt on each of these historical occasions. The Alliance—a “political force preoccupied with Jewish interests”<sup>10</sup> was a strategy of Jewish resistance. The Manifesto of the Alliance, written in 1860, identifies the political challenges facing world Jews, a dispersed community: “. . . all other important faiths are represented in the world by nations—embodied, that is to say, in governments that have a special interest and an official duty to represent and speak for them. Ours alone is without this important advantage. . . .”<sup>11</sup> Starting from this point of marginalization, the young French founders set out to create a “center for moral progress, of religious solidarity, and of protection for all those who suffered for being Jewish.”<sup>12</sup> They sought to battle for explicitly Jewish objectives in a manner that was more effective than local action. The Alliance was an ethnic network that cut across territorial boundaries: “a link,” stated the Alliance’s Manifesto, must be “created, a solidarity established, from country to country, embracing in its network all that is Jewish.”<sup>13</sup> In today’s legal parlance, the Alliance was a *non-territorial* transnational network. In constructing their group identity the Alliance retained public political content, thus blending the characteristics that we identify with ethnic states and those that we identify with transnational networks. Like contemporary international networks, ranging from NGOs and multinational corporations to networks of elites,<sup>14</sup> the Alliance was a *collective* working across borders to address common problems on a global scale. Unlike these transnational groups, however, it was an *ethnic* collectivity that retained public self-rule and therefore operated outside the private realm of the market and of civil society.

This paper addresses three issues. First, it argues that the commonly-understood genealogy of international law must be revised to take into account the

<sup>7</sup> See, e.g., Article 2 of the Polish Minorities Treaty.

<sup>8</sup> See, e.g., Article 7-8 of the Polish Minorities Treaty.

<sup>9</sup> For the text of the Universal Declaration of Human Rights, see [www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html).

<sup>10</sup> Michael Graetz, *THE JEWS IN NINETEENTH CENTURY FRANCE: FROM THE FRENCH REVOLUTION TO THE ALLIANCE ISRAËLITE UNIVERSELLE* 277 (1996). See also 19 ARCHIVES ISRAËLITE (AI) 692-99 (1858); 19 AI 624-45 (1858); 18 AI 200-202 (1857).

<sup>11</sup> *Manifeste de juillet 1860*, cited in David Vital, *A PEOPLE APART: A POLITICAL HISTORY OF THE JEWS IN EUROPE 1789-1939*, 485 (2001).

<sup>12</sup> *Manifeste de Juillet 1860*, in Chouraqui, *Cent ans*, 408, cited in Aron Rodrigue, *FRENCH JEWS, TURKISH JEWS: THE ALLIANCE ISRAËLITE UNIVERSELLE AND THE POLITICS OF JEWISH SCHOOLING IN TURKEY, 1860-1925*, 22 (1990).

<sup>13</sup> 19 AI (1858); Isidore Cahen, *Alliance Israélite Universelle*, 697-98 (1860); *Manifeste de juillet 1860*, I BULLETIN SEMESTRIEL DE L’ALLIANCE ISRAËLITE UNIVERSELLE (BAIU) 7 (1861-66), cited in *id.* at 252-253.

<sup>14</sup> See, e.g.: on “advocacy networks,” Margaret E. Keck and Kathryn Sikkink, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS ON INTERNATIONAL POLITICS* (1998); on private economic networks, Lisa Bernstein, *Opting Out of the Legal System: Extra legal Contractual Relations in the Diamond Industry*, 21 J. L. STUD. 115 (1992); on epistemic networks, Peter M. Hass, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT’L ORG. 1, 3 (1992).

extraordinary role played by the Alliance, a transnational Jewish group that defined itself as corresponding “neither to a state nor to a society nor again to a specific territory.”<sup>15</sup> This is particularly surprising as the period from the late 19<sup>th</sup> century until the 1940s is remembered as the heyday of national sovereignty, a time that established the view that states alone could make law, and only they are bound by it.<sup>16</sup> Second, the paper describes *how* it was that the Alliance was able to disseminate political rules and perform political functions within the scope of international law. Third, by examining the manner in which the Alliance turned to international legal discourse as a site of power, a recourse for Jews who were denied equality on the national level, this analysis seeks to draw conclusions about strategies and outcomes of transnational power. This discussion may prove relevant to contemporary non-territorial ethnic groups and to emerging debate on the prospects for multiculturalism in the liberal state.

The discussion unfolds in 3 parts. Part I introduces the institutional structure and ideology of the Alliance. Part II examines the role of the Alliance in the Congress of Berlin, the Paris Peace Conference and the Declaration of Human Rights, focusing both on the strategies that led to success for the Alliance as well as the price they paid for their involvement. Part III concludes the paper with some observations regarding the power of non-territorial ethnic networks to change the legal discourse.

## I. THE ALLIANCE ISRAÉLITE UNIVERSELLE

The young founders of the Alliance Israélite Universelle shared the belief that all Jews “scattered over the whole surface of the earth”<sup>17</sup> are “answerable to each other.”<sup>18</sup> Armed with this notion of Jewish obligations transcending geography and space, they set out to achieve joint goals. The first of these was legal and had two parts: (1) to defend individual “oppressed” Jews<sup>19</sup> and protect against general attacks against Judaism,<sup>20</sup> and (2) to work toward emancipation, i.e., civil and political rights equal to those of non-Jews, for those Jews who did not yet enjoy this legal entitlement. The second goal was social and economic regeneration, the moral betterment of Jews around the world. In France, to earn emancipation, the Jews first had to prove themselves “worthy” of these rights by becoming “a generation of men

<sup>15</sup> *Manifeste de juillet 1860*, cited in Vital, *supra* note 11, at 485.

<sup>16</sup> See, e.g., J. L. Briery, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE 1* (1955) (“The Law of Nations, or international law, may be defined as the body of rules and principles of action which are binding upon civilized states in their relations with one another.”). See also “restrictions on sovereignty cannot be presumed” from the Case of the S.S. Lotus (France v Turkey) at C.I.J. Ser A. No. 10, 2 Hudson, World Ct. Rep. 20 (1927).

<sup>17</sup> Alliance Israélite Universelle (AIU) Appeal All Israelites (1860), Constitution of the AIU, cited in Paul Mendes-Flohr and Jehuda Reinharz (eds.), *THE JEW IN THE MODERN WORLD: A DOCUMENTARY HISTORY* 316 (1995).

<sup>18</sup> The Alliance’s motto was “*Kol yisrael arevim zeh bazeh*” that stands for the acronym for *kol Israel haverim*, “all Israel are friends” (Babylonian Talmud, Tractate Hagigah, 26a). The motto was translated by the Alliance leaders as “*Tous les Israelites sont solodaires les uns des autres* [Israelites are in solidarity with one another].”

<sup>19</sup> AIU Appeal All Israëlites (1860), Constitution of the AIU, cited in Mendes-Flohr and Reinharz, *supra* note 17 at 316: “If you believe, that . . . those who are afflicted, ought to be assisted, and not merely pitied; that we should defend those who are calumniated and not look on with silent compassion; that we ought to give material aid to those who are persecuted, and not simply cry and lament at their persecution . . .”

<sup>20</sup> AIU Appeal, 1860-1895, 5-7, 14-17, 25-27, 33-35 (1895), cited in *id.* at 318: “[T]o defend the honor of the Jewish name wherever it is attacked . . . such is, under its principal aspects, the work to which the Alliance Israélite Universelle has devoted itself.”

capable of performing every function in society—useful citizens.”<sup>21</sup> Drawing on their own experience and making it the normative path for all Jews, the French founders of the Alliance hinged regeneration to emancipation<sup>22</sup> and made the enjoyment of equal rights dependent on Jews first proving their moral worth as good and productive citizens.

In order to regenerate the Jews, the Alliance opened a vast network of schools proposing to remake the Jews all over the world in their own modern European image. The goal was summed up by the Jewish network’s Secretary-General: “We want to form men: that, in a few words, is what our program is all about.”<sup>23</sup> The content of education was borrowed from the French secular school system and instruction was in French (the language alone being sufficient “to transform the most retrograde man into a liberal.”)<sup>24</sup> By 1914, the educational network of the Alliance encompassed 188 schools with thirteen hundred teachers<sup>25</sup> and 48,000 students. The schools operated in 15 countries across North Africa, the Middle East and the Balkans, all in lands dominated by Muslim cultures. The Alliance also opened pre-school classes, vocational schools, agricultural schools, religious schools, apprentice training programs (including workshops for women), and alumni societies which operated institutions ranging from loan societies to hospitals to book clubs.<sup>26</sup> Spreading out from its schools, the Alliance increasingly offered additional opportunities for social action and reform. Its infrastructure came to constitute almost a surrogate Jewish community.<sup>27</sup> The Alliance contributed strongly to the creation of a new Jewish middle class in the Muslim world. The city of Salonika<sup>28</sup> provides a good example.<sup>29</sup> Before the opening of the first Alliance school in 1873, only a

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<sup>21</sup> *L’Oeuvre des écoles*, BAIU 5 (1865), cited in Michel Abitbol, *The Encounter Between French Jewry and the Jews of North Africa: Analysis of a Discourse (1830-1914)*, in Frances Malino and Bernard Wasserstein (eds.) *THE JEWS IN MODERN FRANCE*, 37 (1985).

<sup>22</sup> For more on French Jews and regeneration, see Jay Robert Berkovitz, *FRENCH JEWRY AND THE IDEOLOGY OF “REGENERATION” TO 1848* (PhD dissertation) (1983).

<sup>23</sup> ARCHIVES OF THE ALLIANCE ISRAËLITE UNIVERSELLE (AAIU), Turquie I B 1, Bigart to Ad’ es, 8 Mar. 1899, cited in Rodrigue, *supra* note 12, at 169.

<sup>24</sup> Cited in Avraham Cohen, *Iranian Jewry and the Educational Endeavors of the Alliance Israélite Universelle*, 48:1 *JEWISH SOC. STUD* 21 (1986).

<sup>25</sup> The exact number of Alliance teachers was 1,275.

<sup>26</sup> On the Alliance’s institutions, see Aron Rodrigue, *FRENCH JEWS, TURKISH JEWS THE ALLIANCE ISRAËLITE UNIVERSELLE AND THE POLITICS OF JEWISH SCHOOLING IN TURKEY, 1860-1925* (1990); Paul Silberman, *AN INVESTIGATION OF THE SCHOOLS OPERATED BY THE ALLIANCE ISRAËLITE UNIVERSELLE FROM 1862-1940* (PhD dissertation) (1973); Michael Menachem Laskier, *THE JEWISH COMMUNITIES OF MOROCCO AND THE ALLIANCE ISRAËLITE UNIVERSELLE: 1860-1956* (PhD dissertation) (1979).

<sup>27</sup> Aron Rodrigue, *id.* at 20, gives an example of the breadth of Alliance efforts and public services to be found in the Turkish city of Izmir:

In the twenty five years since the coming of the organization to the city in 1873, it had created one school for boys, one for girls, one kindergarten, one educational school in the suburb . . . two “popular” schools resulting from the merger of several small mieldars [traditional schools], two apprenticeship programs, one dressmaking workshop for girls, one alumni society with 300 members, one reading club, and one mutual aid society for artisans. . . . The Alliance schools were deeply involved in philanthropic activities. They provided thirty to forty thousand free meals a year to the poor students and were directly involved with the administration of the Rothschild hospital . . .

<sup>28</sup> 56 percent of the total inhabitants of Salonika were Jews. See George Weill, *Agudat Kol Israel haverim v Matzvan h-hvrati shel khilot hyam-htichon b-sof h-meha h-yod-tet (1860-1914)*, L’“ALLIANCE” DANS LES COMMUNAUTÉS DU BASIN MÉDITERRANÉEN À LA FIN DU 19ÈME SIÈCLE ET SON INFLUENCE SUR LA SITUATION SOCIALE ET CULTURELLE 9 (1987).

<sup>29</sup> Tzvi Zoar surveyed the success of the Alliance across different countries and concluded that the impact of the Alliance varied from locality to locality. The Alliance schools were espe-

handful of native Jews had modern education.<sup>30</sup> As early as 1908, however, Salonika had thousands of Jews with a Western-style secular education.<sup>31</sup> Most of the new Jewish middle class were graduates of the Alliance,<sup>32</sup> and nearly all of the professionals had attended the organization's primary schools.<sup>33</sup> Summarizing the impact of the Alliance, one Iranian Jewish leader wrote: "Once, God sent Moses to redeem the Jews. Now the Alliance . . . has come to save us."<sup>34</sup>

While the Alliances' efforts were clearly focused on the Jews, the goal was wider than this particular ethnic community. The founders of the Alliance were true republicans committed to universal equality before the law and religious freedom.<sup>35</sup> Jewish emancipation was one manifestation of a larger collective responsibility, in the name of universally shared Western liberal values.<sup>36</sup> The Alliance understood its own work on behalf of Jews as a good for all humanity. The limits were elastic enough to encompass the idea of a universal public realm in which all divisions between men would disappear, but in the present, and until the moment of complete unity, the Alliance applied itself to the specific realm of Jewish solidarity.<sup>37</sup> In the words of the Alliance Manifesto: "[U]niversal union is among our aspi-

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cially successful in transforming native Jewish societies in those countries that were already taking their first steps toward modernization. Alexandria, Egypt, for example, was open to the West since the middle of the nineteenth century resulting in a Jewish community more familiar with the ways of the West, and thus less in need of guidance on its path toward modernization. The Alliance closed its school in Alexandria after only twenty years of operation. Iraq, on the other side of the spectrum, was relatively closed to the West when the Alliance started its work there in 1864. Initially, the Jewish community saw little immediate or tangible utility in Western education. Indeed, by the beginning of the twentieth century only a few students graduated from the Alliance school. With the opening of the Suez Canal, however, the practical benefits of education became clear to the native Jewish community and the school attendance rose. Western education provided by the Alliance left the native Jewish community better positioned than the rest of the native population (not least because of knowledge of languages) to reap benefits from the new waterway. As a result the influence of Jews was so strong that on Saturday and Jewish holidays, the marketplaces were deserted and banks closed. Tzvi Zohar, *H Alliance bkhillot agan hayam ha-tichon b-sof h-meha h-yod-tet*, in *L'ALLIANCE" DANS LES COMMUNAUTÉS DU BASIN MÉDITERRANÉEN À LA FIN DU 19ÈME SIÈCLE* 31-35 (1987). See also Tzvi Yehuda, *l-hharchat mifhala h-hinochi shel hevrat kol Israel haverim b-Iraq ad l-milchement h holm h-rishona*, in *id*, 38-40 (1987). On the link between practical benefits from education and school attendance in the context of the French state, see Eugen Weber, *PEASANTS INTO FRENCHMEN: THE MODERNIZATION OF RURAL FRANCE 1870-1914* 303-330 (1796).

<sup>30</sup> Silberman, *supra* note 26, at 218.

<sup>31</sup> In 1905 there were about 15,000 Jewish children of school age in Salonica, of whom 9,425 attended school; of these, 2,200 were pupils of the Alliance schools, 4,000 at 53 *hederim*, 1,500 at two Talmud Torah, 1,000 at 5 other Jewish schools, and 725 (including former pupils of the Alliance schools) at four Protestants, Italian, Catholic, and other non-Jewish schools, see Zosa Szajkowski, *The Schools of the Alliance Israélite Universelle*, 22 *HISTORIA JUDAICA* (1960), at 5.

<sup>32</sup> George Weill, *supra* note 28.

<sup>33</sup> Paul Silberman calculated that nearly all of the clerks, most of the merchants, hundreds of employers and artisans, almost all of the doctors, lawyers, engineers, and journalists in the city had attended the organization's primary schools. See Silberman, *supra* note 26, at 218.

<sup>34</sup> Quoted in Cohen, *supra* note 24, at 31-31.

<sup>35</sup> For a detailed discussion on the manner in which the Alliance associated Jewish emancipation with a larger republican mission, see Lisa Moses Leff, *SACRED BONDS OF SOLIDARITY: THE RISE OF JEWISH INTERNATIONALISM IN NINETEENTH-CENTURY FRANCE* (2006).

<sup>36</sup> *Id.*

<sup>37</sup> The argument is based on Graetz, *supra* note 10.

rations without any doubt; and we consider all men our brothers; but just as the family comes before strangers in the order of affection, so religion inspires, and memory of common oppression fortifies, a family sentiment that in the ordinary course of life surpasses others.”<sup>38</sup> The result was that the Alliance’s mission encompassed internal tensions or contradictions. The network involved itself from outside the institutions of the state in shaping the material conditions of Jews with the goal of molding citizens. One effect of regeneration was to enlarge the long-term civil and political status of Jews, who were not yet property owners in a Muslim East yet to be organized into state units. This exercise conflated the private realm of faith (religion) and the public realm of the state (emancipation), the market (regeneration) and education (culture), the territorial (citizenship) and the non-territorial (Jewish solidarity).

The Alliance was aggressively anti-Zionist;<sup>39</sup> Jews were to be loyal citizens of their places of residence. But the Alliance did not seek to suppress ethnic difference. On the contrary, its founders expressed a strong sense of Jewish identity and connectedness to Jews in the rest of the world. Isidore Cahen, one of the founders and main policy makers of the Alliance, explained the political agenda of the network on the international stage: “[The Alliance] was born in France, but that is merely accidental. It is neither French, nor English, but universal. It sees a strength in every coreligionist, and feels obliged to act whenever one of its brothers suffers as a result of his religious convictions.”<sup>40</sup>

## II. THE ALLIANCE AND HUMAN RIGHTS LAW

### A. Congress of Berlin

The first formal presence of the Alliance in the international realm occurred during the Congress of Berlin (June–July 1878), in the wake of the Russo-Turkish

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<sup>38</sup> *Manifeste de juillet 1860*, cited in Vital, *supra* note 11, at 485. See, on another occasion: “. . . even if we have become the sons of different homelands, we have not repudiated the religious fraternity that has been bequeathed to us by thirty centuries of glory and of suffering.” Adré Kaspi, *La Fondation de l’Alliance Israélite Universelle* Diplôme d’Etudes supérieures dactylographie. Faculté des Lettres de l’Université de Paris (1959), quoted in Rodrigue, *supra* note 12, at 18.

<sup>39</sup> The Alliance’s objection to Zionism was not only philosophical (the Alliance did not understand world Jews as a separate nation), but also along practical lines. In the words of the Alliance Secretary General Jacques Bigart in 1918:

Palestine has fewer than 100,000 Jews and 500,000 Arabs. The government of the Entente pride themselves 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 Zionists demands and the ambitions of the prominent leaders of re-awakened Arabia. Elie Kedourie, *The Alliance Israélite Universelle, 1860-1960*, 9 JEWISH J. SOC. 92, 95 (June 1967).

On a different occasion the same Secretary-General said in 1910: “If Turkish Jewry allows itself to be overtaken by this gangrene [Zionism], it would prove that our system of education has not been good, has not created the mentality that we wanted to impart.” AAIU, *Turquie I.G.* 1, Bigrat to Nathan, 22 Nov. 1910, , quoted in Rodrigue, *supra* note 12, at 144.

<sup>40</sup> André Chouraqui, *L’Alliance Israélite Universelle et la Renaissance Juive Contemporaine, 1860-1960*, at 40-41, cited in Silberman, *supra* note 26, at 53.

War (1877–1878), at the heart of which lay territorial questions that stemmed from the disintegration of the Ottoman Empire. The Alliance’s goal at the Congress was to make the international recognition of the independence of three new states carved out of the Ottoman Empire (Romania, Serbia, and Bulgaria) explicitly contingent on their accepting a clause that mandated religious tolerance and liberty for their citizens, and also compelling the new states to grant their Jewish inhabitants citizen status. The focus was Romania where Jews had for decades suffered from “savage measures”<sup>41</sup> and been the targets of “cold pogroms”—systematic exclusion by laws and threats of expulsion.<sup>42</sup> The Alliance had addressed itself to the grim situation of Romanian Jews since the establishment of the Jewish network. As early as 1861, the Alliance’s president “promised publicly that the Alliance would help the Romanian Jews to become full citizens.”<sup>43</sup> But the Jewish network had been unable to effect change by working through national channels in Romania. <sup>44</sup> Now the Alliance went beyond the national state to place the matter squarely before the international legal system.

The Alliance sent three delegates to Berlin to establish a special Council, shape a cohesive Jewish political campaign, and ensure that the position of the Balkan Jews be placed on the Congress’ agenda.<sup>45</sup> The efforts of the Alliance were rewarded in a clause within Article 44 of the Treaty of Berlin, which stated: “In Romania the distinction of religion, creed or confession cannot be brought up against anyone as motive of exclusion and incapacity, as regards the enjoyment of civil and political rights.”<sup>46</sup> Ultimately, the scope of Article 44 was wider than the Jews of Romania. Through their work, the Alliance had helped to create a new precedent, making the protection of religious liberties for minorities an act of European public policy rather than an arbitrary act of interested states.<sup>47</sup>

Four factors facilitated the Alliance’s success in the negotiations in Berlin: (1) the Alliance’s ideology matched the international legal culture of the time, (2) the ethnic network functioned under the shield of a strong state, (3) the achievements of the Alliance were secured through powerful and highly-placed individuals, and (4) the Alliance was able to exploit the legal and political instability of the time. Each of these factors is discussed in some detail below.

The Congress of Berlin took place in an international culture whose central preoccupation was the inherent normative value of civilization and progress. This legal discourse was associated, on the one hand, with liberal internationalism in

<sup>41</sup> Words of Adolphe Crémieux in a letter to Prince Carol, quoted in Solomon V. Posener, *ADOLPHE CRÉMIEUX: BIOGRAPHY 187* (1940).

<sup>42</sup> For a discussion of the pogroms in Romania, see Carole Fink, *DEFENDING THE RIGHTS OF OTHERS: THE GREAT POWERS, THE JEWS, AND INTERNATIONAL MINORITY PROTECTION 1878-1938* 3-14 (2004).

<sup>43</sup> Leff, *supra* note 35, at 188.

<sup>44</sup> Lisa Leff discusses the many attempts of the Alliance to directly negotiate with Romanian officials—including opening 34 local Alliance committees in Romanian towns, conducting regular correspondence with Romanian officials on behalf of Romanian Jews, meeting directly with Romanian officials (Adolphe Crémieux, the President of the Alliance, even met Prince Carol). *Id.* at 188-9.

<sup>45</sup> Posener, *supra* note 41, at 196. In Berlin, the Alliance unified the work of the Committee of Jewish Affairs in Berlin, the Zion Society of Bucharest (the delegations of Romanian Jews), and members of the Alliance in Berlin.

<sup>46</sup> France Ministère des Affaires Étrangères, *DOCUMENTS DIPLOMATIQUES: AFFAIRES D’ORIENT: CONGRÈS DE BERLIN, 1878* at 290-291, quoted in Fink, *supra* note 42, at 29. Identical provisions of negative rights (providing for non-discrimination or negative equality) were inserted to the treaties with Serbia (Article 35) and Bulgaria (Articles 5 and 12).

<sup>47</sup> Inis L. Claude, Jr., *NATIONAL MINORITIES: AN INTERNATIONAL PROBLEM* 6 (1955).

Europe,<sup>48</sup> and, on the other hand, with formal empire in the colonies and the extension of European legal and political institutions to the “Orient.”<sup>49</sup> Working within this culture, the Alliance articulated its goal of Jewish emancipation in language that emphasized civilization:

Legal discrimination and popular violence against Romanian Jews “should not be examined from the special point of view religion; more importantly it is about the rights of people, moral laws, and the great laws of humanity . . . [The] interests of general civilization . . . are at stake here.”<sup>50</sup>

This alignment between the fate of Romanian Jews and the spread of European civilization was not a cynical maneuver. Instead the tie reproduced the Alliance’s own ideology which held that emancipation was to be secured through moral betterment, echoing the ideology of French republicans (regeneration).<sup>51</sup>

The second factor that facilitated the Alliance victory in the Congress of Berlin was its close relationship with the French state—a closeness which grew, in large part, from the overlap between the Alliance’s international work and French colonial interests. The hallmark of French colonialism was its *mission civilisatrice*,<sup>52</sup> and nothing was more critical to this task than teaching the French language.<sup>53</sup> Advancing French linguistic expansion (“to teach, thereby assimilate”) constituted French power and secured France clear economic and political benefits during a moment of intense colonial competition at the end of the nineteenth century.<sup>54</sup> The Alliance’s Central Committee was quick to point out the close association between French interests in the Orient and their own educational institutions: “Wherever the Alliance creates a school, there comes into being a small home of French culture.”<sup>55</sup> The small French home in the midst of the colonial woods was of particular importance for France in the Middle East (where there were no official French colonies) and North Africa (where France had direct control, but over a region devoid of Catholics). The value of the Alliance schools did not escape the attention of French diplomats in the Muslim East. Thus, one of the French consuls in the colonies declared that the Alliance schools “serve our interests [by helping in] the moral conquest of the country.”<sup>56</sup> And so while it appeared that the Alliance arrived at the Congress of Berlin as a small ethnic network, it was actually a petite Jewish entity working under the aegis of a strong friend.

The third factor that facilitated the Alliance’s success in Berlin was its strong connection to two powerful men: Adolphe Crémieux, the President of the Alliance from 1863 until his death in 1880, and Gerson von Bleichröder, a renowned Berlin

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<sup>48</sup> Martti Koskenniemi, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* 148 (2002) and Martti Koskenniemi, *Nationalism, Universalism, and Empire: International Law in 1871 and 1919* (draft presentation).

<sup>49</sup> *Id.*

<sup>50</sup> *Compte-rendu*, BAIU 56 (2nd Semester 1872), quoted in Leff, *supra* note 35, at 192.

<sup>51</sup> See Graetz, *supra* note 10.

<sup>52</sup> Jules Michelet defined the French mission to civilize: “The love of conquest is the pre-text of our wars, something we ourselves have not realized. Yet proselytism is the most ardent motive. The Frenchman wants to superimpose his personality on the vanquished . . . he thinks he can do nothing in the world more profitable than to give him his ideas, customs, and fashions . . . this is a sympathetic instinct for intellectual fecundation.” Mort Rosenblum, *MISSION TO CIVILIZE: THE FRENCH WAY* 8 (1986).

<sup>53</sup> *Id.*

<sup>54</sup> This discussion is based on Rodrigue, *supra* note 12, at 145.

<sup>55</sup> Ministère des Affaires Étrangères, NS, Turquie 138, copy of the letter from the Alliance to the Foreign Ministry, 30 Dec. 1912, quoted in *id.* at 154.

<sup>56</sup> From the letter of the French Consul of Edrine to the *Alliance* congratulating the work of the school. AAIU Turquie IV.E., Courtois to Bloch, 15 May 1873, quoted in *id.* at 149.

banker.

Adolphe Crémieux was a major public figure in the French state who served twice as the Minister of Justice. In his role as a state agent, he defined himself as a “Jewish French citizen”<sup>57</sup> and was a fierce supporter of French Republicanism.<sup>58</sup> Upon his death, the Chamber of Deputies voted without debate for a national funeral,<sup>59</sup> an honor that attested to the high rank and esteem he enjoyed. In his second role, as the President of the Alliance, Crémieux saw it as his “duty, in which I have never failed,” to exercise agile political powers in the public defense of world Jews and “not to let pass any attack against my co-religionists.”<sup>60</sup> At the Congress of Berlin, Crémieux exercised from afar his close ties to the French government and also to other European diplomats.<sup>61</sup> Being too old to attend the conference, he worked tirelessly to coordinate Jewish efforts so that “. . . the Jews shall become the equals . . . the fellow citizens of those who treat them as belonging to inferior caste . . .”<sup>63</sup>

The second important figure was the Jewish Gerson von Bleichröder.

<sup>57</sup> Quoted in Posener, *supra* note 41, at 128.

<sup>58</sup> On two different occasions Crémieux threw himself into the heat of social conflicts in France, and he actively participated in maintaining the Republican order. First during the Provisional Government that proclaimed the Second Republic (February 1848 to June 1848), Crémieux was appointed the Minister of Justice and the Interior with control of the public order, and fought for the implementation and guardianship of the “strength” of the state itself and its institutions. Then again in 1870, after the fall of Napoleon III, standing beside Léon Gambetta, Crémieux became an active participant in the founding of the Third Republic, once more imposing a legitimate Republican order. In 1870, Crémieux was made a member of the cabinet in the Government of National Defense (Sep. 1870 to Feb. 1871) and served for the second time as the Minister of Justice. Pierre Birnbaum wrote of the political career of Crémieux that he became the “great orchestrator of Franco-Judaism, the key personality in the formation of a politico—administrative elite of state Jews.” See Pierre Birnbaum, *THE JEWS OF THE REPUBLIC: A POLITICAL HISTORY OF STATE JEWS IN FRANCE FROM GAMBETTA TO VICHY* 11 (1966). On the events leading to the *coup d'état* of “napoleon the little” on December 2, 1851, see Karl Marx, *THE 18<sup>TH</sup> BRUMAIRE OF LOUIS BONAPARTE* (1998 [1852]).

<sup>59</sup> In laying the bill for a national funeral on the table, the Minister of the Interior declared: “The government of the Republic acquires a debt of gratitude and fulfills a duty of honor in asking you to grant Adolphe Crémieux the reward reserved for citizens who have rendered great service to their country: a funeral at the expense of the state.” Posener, *supra* note 41, at 231. In a sign of mourning, the session of the day of burial, February 13, 1880, was cancelled and the vice-president of the Senate praised Crémieux: “When a man, a man who has held such a place in the history of our times, passes away, whatever be the cause or public opinion he served, his name is part of the common patrimony, and it can be said that the day of his death is one of public mourning.” *Id.* at 232.

<sup>60</sup> *Id.* at 182-183.

<sup>61</sup> For instance, Crémieux addressed to Lord Beaconsfield a letter calling for England’s support for the Jews of Romania:

You are going to insure the Christians against Muslim persecution, the freedom of the Christian religion, the security of their persons, their families and their property. . . . What I ask in the name of all the Jews of the world, as president of the Alliance Israélite Universelle, is that by a similar decision you insure the Jews against persecution by the Christians, the freedom of the Jewish religion, the security of their persons, their families and their property. Under your aegis the Jews shall become the equals. The fellow citizens of those who treat them as belonging to inferior caste . . . We do not know what the decision of the Congress will be on Rumania’s nationhood . . . Let the decision of the Congress be a law which obliges her to recognize the rights of the Jews in Rumania . . . *Id.* at 195-196.

<sup>63</sup> *Id.* at 195-196.

Bleichröder handled the private banking transactions of Otto von Bismarck, as well as official financial arrangements for the Prussian state.<sup>64</sup> Concerned about the fate of Romanian Jews, Bleichröder convinced Bismarck that being a friend to the Jews would serve his political interests and especially German's imperial ambitions in eastern and southeastern Europe.<sup>65</sup> While article 44 was ultimately proposed by the French foreign minister, it was Bismarck who defined the strategy for approaching Jewish rights at the Conference, with Bleichröder working behind the scene.<sup>66</sup> Bismarck suggested a piecemeal strategy starting with Bulgaria, "where it hurts least," and thereby cornering Romania.<sup>67</sup>

A fourth factor in the success of the Alliance was the fragmented cultural reality of Europe at this time. The officials at Berlin represented an assortment of entities: the Western European powers, increasingly organizing themselves around the particular institution of the sovereign state; three Empires, still structured according to completely different concepts of sovereignty; and three new states seeking recognition. International legal discourse itself was not yet unified into a consolidated system that could impose its norms unilaterally. The legal system still recognized the existence of multiple political configurations and legal authorities and was not yet organized around the single binary distinction between states and non-states.<sup>68</sup> This fractured political situation offered an opportunity to negotiate and discuss different ways of configuring identity, and opening a space hospitable to changes of meaning and shifts in legal and political authority.<sup>69</sup> The Alliance representatives, talented negotiators, were able to work well within this complicated terrain of multiple political and cultural contexts.<sup>70</sup>

The judicial success of the Alliance in influencing the outcome of the conference was unprecedented. Crémieux exulted: "Jesus died in the year 33 . . . Well, here are a few million more square meters where, perhaps, at the end of eighteen hundred and forty-five years, they will cease persecuting the Jews in the name of a god of mercy and forgiveness . . ." <sup>71</sup>

While the legal success of the non-territorial Jewish network was spectacular, the political success was very limited. Article 44 contained no guarantees for compliance; the ink was not dry before Romania proceeded to break its treaty obligations. It was one thing for Bleichröder and Crémieux to align the interests of Ro-

<sup>64</sup> Stern Fritz, *GOLD AND IRON: BISMARCK, BLEICHRÖDER AND THE BUILDING OF THE GERMAN EMPIRE* (1979).

<sup>65</sup> Leff, *supra* note 35, at 197.

<sup>66</sup> Fink, *supra* note 42, at 23-25.

<sup>67</sup> *Id.* at 24-25.

<sup>68</sup> Late nineteenth century jurists still recognized one law for civilized people and a different legal authority for uncivilized; "sovereignty" as a quality that only European states could have. *See, for instance*, the Act of Berlin (26 Feb. 1885) at the conclusion of the Berlin West African Conference that made sovereignty as exclusivity but excluded the non-Europeans from the ambit of the rule. For a discussion of the Berlin Conference, *see* Koskenniemi, *supra* note 48, at 121-127. On sovereignty as exclusivity of Europe, *see* Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-century International Law*, 40 HARV. INT'L L. J. 1 (Winter, 1999).

<sup>69</sup> This discussion on the moment of legal creativity is built on Nathaniel Berman's writing in the context of territorial self-determinism. He uses the case of Aaland Islands Case to show that "temporary anarchy and dislocation provided the space for legal creativity." Nathaniel Berman, *Sovereignty in Abeyance: Self-Determination and International Law*, 7 WIS. INT'L L. J. 51, 68, 80 (1988).

<sup>70</sup> In this complex atmosphere with a large dispersion among possible outcomes, the bargaining skills and experience of people like Crémieux and Bleichröder gave the Jewish network a greater premium still. *See* Robert H. Mnookin and Lewis Kornhauser, *Bargaining in the Shadow of the Law: the Case of Divorce*, 88 YALE J. L. 950, 979-980 (1979).

<sup>71</sup> Posener, *supra* note 41, at 197.

manian Jews with the larger interests of Germany and France for the purposes of negotiating commercial and political treaties; it was quite another to make the state actors actually enforce these clauses. The great powers shut their eyes to Romania's violations of the rights of citizenship of Romanian Jews. Expulsion, violence, and discrimination against Romanian Jews were once again viewed as domestic matters, not international issues. Out of 200,000 Romanian Jews only a few individuals obtained naturalization,<sup>72</sup> yet a minister of Romania claimed: "We can boast that we have resolved the Jewish question in the national sense."<sup>73</sup> Recognition of Romania was not withdrawn on account of non-fulfillment of article 44 of the Berlin Treaty.

The Alliance's judicial victory became a political defeat. Not only did the situation of Romanian Jews become progressively worse, but the unity and power demonstrated by the Jews in Berlin caused a strong backlash of anti-Semitism. Indeed Romanian Jews "pleaded with the Central Committee to stop writing to them on the Alliance letterhead, and to stop using their names in articles in European press."<sup>74</sup> The Alliance's non-territorial influence was vilified as a plot for Jewish world domination—"Jews were using the institutions of French government to destroy gentiles (especially Christians and the Catholic Church) for their own material benefit."<sup>75</sup> Edouard Drumont's publication of *La France Juive*, which has been described as "the catalytic force that turned anti-Semitism into a real political force in France,"<sup>76</sup> used a reprinted passage from the *Bulletin de L'Alliance Israélite Universelle* as proof that the outcome in Berlin was the result of a successful Jewish plot:

Crémieux, in a meeting of the Alliance Israélite, exclaimed . . . "My faith in our beautiful situation today is great! Ah! Let me give all due credit to the noble, loyal and pure behavior of our minister of foreign affairs, our Mr. Waddington." This word "our" seems to indicate that Waddington is of Jewish origin; unless Crémieux meant that the minister of foreign affairs was theirs because they had paid him.

Jew, or paid by the Jews, Waddington didn't hold back from defending his race or earning his pay. He worked hard for the Treaty of Berlin, which meant death for Romania, with typically Jewish ferocity. France, thanks to him, generous France, played the role of the policeman clutching the wrists of a poor nation so that the Jew could pour his wrath into the mouth of the dying man.<sup>77</sup>

Wilhelm Marr, another vitriolic anti-Semite, wrote:

There is no stopping them . . . Who derived the real benefit at the Congress of Berlin from the spilled blood of the Orient? Jewry. The *Alliance Israélite Universelle* was first in line. Romania was forced to open officially its doors and gates to destructive Semitism . . . . Dear reader, while you are allowing the German to be skinned alive, I bow my head in admiration and amazement before the Semitic people, which has us under

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<sup>72</sup> Macartney, *supra* note 6, at 169.

<sup>73</sup> *Id.* at 110.

<sup>74</sup> Leff, *supra* note 35, at 198.

<sup>75</sup> *Id.* at 202.

<sup>76</sup> *Id.* at 219.

<sup>77</sup> Edouard Drumont, 1 *LA FRANCE JUIVE* 224 (1886).

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## B. The Paris Peace Conference

The Paris Peace Conference (1919) at the conclusion of the First World War institutionalized and systematized a new international system, confirming the primacy of the sovereign state and seeking to secure a lasting public order within recognized frontiers. The Conference embraced a two-sided scheme: territorial self-determination and a comprehensive system of protection for those who were denied the principle of nationalities.<sup>79</sup> Thus, a new pattern of identity was invented in Paris: the “minority” was defined as a way to allow the ethnic and religious outsider to enter the state-system of organization. Of those ethnic communities denied self-determination, only the Jews had strong friends among the victorious Allies.<sup>80</sup> Backed by prominent Jews in the United States, Great Britain, France, and Italy,<sup>81</sup> the “powerful Hebrew organizations,”<sup>82</sup> in the words of De Azcárate, the director of the Minorities Section of the League Secretariat, quickly assumed a position of leadership in the negotiation of the Minorities Treaties. Of the Jewish organizations, the Alliance, with its seat in Paris, was the first on the scene in Versailles.<sup>83</sup>

While at the Conference of Berlin the Alliance had faced only external challenges, at the Paris Peace Conference the Jewish network was also confronted with a strong Jewish nationalist camp. In contrast to the Alliance, which advocated the complete political, social and economic integration of the Jews into their states of residence, the nationalists called for a Jewish state in Palestine, national autonomy in all other countries (including cultural, social and political rights) and Jewish admission into the League of Nations as a separate nationality.<sup>84</sup>

After long and bitter negotiations, the Alliance adopted a compromise position. In its memorandum addressed to the Peace Conference Secretariat (February 20, 1918), the Alliance asked for three categories of rights.<sup>85</sup> The first was individual rights: the Alliance requested that the newly created states remove all civil and political restrictions on minorities and prohibit future discrimination against mi-

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<sup>78</sup> Wilhelm Marr in his pamphlet, *The Victory of Judaism over Germandom (Sieg Judenthums ueber das Germanenthum vom nicht confessionellen Standpunkt ausbetrachtet)* (1879), quoted in Mendes-Flohr and Reinhartz, *supra* note 17, at 331-332.

<sup>79</sup> The creation of new borders caused the dislocation of an estimated 25 to 30 million peoples (roughly one fifth to one quarter of the population of the states in which they lived). The unhappiness of those abandoned outside the rationale of territorial self-determination, provided, said Woodrow Wilson, the “fertile sources of war.” Quoted in Tennent Harrington Baglay, *The International protection of Minorities*, in Satish Chandra (ed.), *MINORITIES IN NATIONAL AND INTERNATIONAL LAW* 196 (1985).

<sup>80</sup> There is consensus in the literature on the power of Jewish delegations during the negotiations of the Minorities Treaties in the Paris Peace Conference. See Macartney, *supra* note 6; Oscar I. Janowsky, *THE JEWS AND MINORITY RIGHTS 1898-1919* (1933); Fink, *supra* note 42; Jacob Robinson, *WERE THE MINORITIES TREATIES A FAILURE?* (1943); Edward Mandell House and Charles Seymour, *WHAT REALLY HAPPENED IN PARIS—THE STORY OF THE PEACE CONFERENCE, 1918-1919—BY AMERICAN DELEGATES* (1921); P. De Azcárate, *LEAGUE OF NATIONS AND NATIONAL MINORITIES: AN EXPERIMENT* (1945).

<sup>81</sup> Janowsky, *id.* at 261.

<sup>82</sup> De Azcárate, *supra* note 80, at 6.

<sup>83</sup> Janowsky, *supra* note 80, at 283.

<sup>84</sup> On the Zionists claims in Paris, see: Janowsky, *supra* note 80, at 272-282; Eugène C. Black, *A Typological Study of English Zionists*, 9:3 *JEWSH SOC. STUD.*, 20 (2003); Fink, *supra* note 42.

<sup>85</sup> This memorandum was written as one part of a joint document the Alliance issued together with the Jewish British Joint Foreign Committee who sent their communication to the Secretariat a day later on February 21.

minorities. These rights of “negative equality,” were in line with the Alliance goal of emancipation (prohibiting unequal treatment) and followed the Berlin precedent. In addition, the Alliance added a new category of positive group rights. The Alliance proposed that the minority *group* had rights distinct from those of the individuals composing it. These rights provided for the protection of the “religious and cultural minority,”<sup>86</sup> and extended religious, educational and cultural autonomy to all minorities. This category of positive rights invoked a different mapping: in addition to describing Jews as undistinguishable *individual* citizens, the Alliance now asked for rights that would secure the cultural difference of the Jews as a *group*, and legalize their difference in the new states’ constitutions. Having laid out a scheme for individual negative rights and group positive rights, the third category of rights was enforcement. The Alliance suggested that the Secretariat make minorities a participant in the international system being constructed for their protection, and provide minorities a legal *locus standi* to bring forth claims of abuse.<sup>87</sup>

The inclusion of positive group rights was an uneasy compromise forced upon the Alliance by the Eastern European nationalist delegations. The Alliance stopped short, however, of endorsing “national” minorities. In explaining its support for the positive rights, the Alliance emphasized that these were only an intermediate step on the way to complete assimilation:

Since 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.<sup>88</sup>

Most of the Alliance’s proposals made their way into the Minorities Treaty. It is useful briefly to compare the Alliance’s memorandum to the Peace Conference Secretariat with the final draft of the Polish Minorities Treaty, which served as the test case.<sup>89</sup> As in the Alliance’s memorandum, the first category of rights in the Polish Treaty (Articles 2-6) prevented discrimination against individuals. Indeed, the list of negative rights providing for the equality of the individual was wider than in the Alliance’s formula and included the free exercise of the minority’s language,

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<sup>86</sup> For a detailed discussion of the Alliance memorandum, see Janowsky, *supra* note 79, at 324-325.

<sup>87</sup> The Alliance memorandum reads: “[A]ny persons or communities who may suffer from the non-observance of any provisions of this Article shall have the right to submit their complaints to the Executive Committee of the League of Nations, and to seek the protection of that body.” *Id.*

<sup>88</sup> *Id.* at 326.

<sup>89</sup> The Polish Treaty was the first treaty signed and constituted a test case for all subsequent Minorities Treaties imposed on the new states. Poland—at once the most powerful of the treaty states and deeply hostile to minorities—was the only one of the new states whose independence was specifically mentioned in Wilson’s Fourteen Points: “There is imposed upon the Allies a special obligation to use the victory which they have won in order to re-establish the Polish nation in the independence of which it was unjustly deprived more than one hundreds years ago . . . To undo this wrong is one of the first duties of the Allies” (Point 13). Poland, moreover, was alone about to secure large territorial cessions from Germany and its Minorities Treaty had been prepared for signature on the same day as the German Treaty. The quote is taken from Macartney, *supra* note 6, at 197. Upon the signing of the Polish Treaty (drafted approved by the Council on May 17 and signed on June 28, 1919), similar treaties were drafted for Czecho-Slovakia, Serb-Croat-Slovene State, Romania, Greece and the enemy powers except Germany. For the full text of the Polish Minorities Treaty, see Macartney, *supra* note 6, at 510-514.

religion, art, literature, press and educational facilities, as well as an equitable share of public funds. The citizenship clauses also exceeded the Alliance proposal, declaring that no one should be treated as alien and excluded from Polish nationality and citizenship on account of race, language or religion. The second category of rights (Articles 7-8 of the Polish Minorities Treaty), included linguistic and cultural autonomy as well as institutional rights<sup>90</sup> and awarded a minority both the legal privilege and cultural space to remain a distinct group and a right not to assimilate into the majority group (“preserve and develop their national culture and consciousness”).<sup>91</sup>

However, where the Alliance and the authors of the Treaty diverged was on the third category of rights—enforcement. The final draft of the Treaty awarded minorities cultural autonomy, but, importantly, it did not provide minority groups political independence in international fora.<sup>92</sup> These groups did not receive the right to direct participation or formal status in the system designed for their own protection. Instead, the framers of the treaties internationalized the responsibility for the protection of minorities, and strengthened the system of state power. Only state members of the Council of the League could submit claims on behalf of an aggrieved minority.

All told, the Alliance record in Paris was a mixed one. The Alliance, which stood for Jewish assimilation within the state structure, was defeated in its internal battle against the Zionists, who called for a legally distinct ethnic identity.<sup>93</sup> Nonetheless, in its external interactions the Alliance was successful, as the conference was another victorious exercise of power in the international arena. The group had a shaping influence on the Minorities Treaties and in so doing carved out new rights for Jews and all minority peoples. Reflecting on this victory, one leader of the Jewish group noted: “Instead of more or less banal Clauses in the Peace Treaty,” there would be something “safer and solid,” a “detailed statute of Minorities.”<sup>94</sup>

Many of the factors that allowed the Alliance to wield power in Paris in 1919 were the same as those that had strengthened the group in Berlin in 1878. It continued to benefit from a close relationship with France and from the devoted efforts of powerful individuals. Key members of the non-territorial Jewish network worked for the French government as members in the Consistory system.<sup>95</sup> Sylvain

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<sup>90</sup> These regimes of positive rights included the free exercise of the minority’s language, religion, art, literature, press and its facilities for education and equitable share of public funds.

<sup>91</sup> Azcárate, *supra* note 80, at 39.

<sup>92</sup> This analysis of the Minorities Treaties is based on Nathaniel Berman’s work in a series of articles, including: Nathaniel Berman, *Modernism, Nationalism, and the Rhetoric of Reconstruction*, 4 YALE J. L. & HUMAN. 351 (1992); Nathaniel Berman, *Between “Alliance” and “Localization”: Nationalism and the New Oscillationism*, 26 NYU J. INT’L L. & P. 449, 450 (1994); and Nathaniel Berman, *But the Alternative is Despair: Nationalism and the Modernist Renewal of International Law*, 106 HARV. L. REV. 1792 (1993).

<sup>93</sup> See article 9 of the Polish Minority Treaty, one of the two “Jewish articles,” that specifically signaled out Polish Jews from the rest of the population.

<sup>94</sup> The words of Lucien Wolf, the Secretary of Joint Foreign Committee, who acted for English Jews and was closely associated with the Alliance. Lucien Wolf’s diary, 6 May 1919, quoted in Fink, *supra* note 42, at 217. The Anglo-Jewish Association was founded in 1871 and modeled on its French counterpart, the Alliance Israélite Universelle. The Joint Foreign Committee was founded in 1878 and worked with the British Foreign Office in its efforts to improve the conditions of Jews in foreign lands.

<sup>95</sup> For example, Narcisse Leven, while serving as the President of the Alliance from 1898 to 1915, was also a senior member of the Central Consistory—a French state body.

Lévi, one of the Alliance delegates in Paris, had ties to the French government.<sup>96</sup> Another important figure was Lucien Wolf, Secretary of the Joint Foreign Committee, a group which acted for English Jews and was closely tied to the Alliance. Wolf had strong ties to the British delegation<sup>97</sup> and also maintained a warm relationship with Henry Morgenthau who was also present in Paris and was a friend of President Woodrow Wilson.<sup>98</sup> The Jews also benefited from the close relationship between President Wilson and Louis Brandeis, who “was primarily responsible for Wilson’s interest in Jewish national or minority rights.”<sup>99</sup>

In Paris, however, the Alliance no longer emphasized its role in civilizing the colonial lands of the East. Instead, it framed its activities around the dominant idea of the time: the move toward territorial nation-states. The Alliance supported the power of nation-states and, importantly, did not want one of its own. Indeed, it is argued below that it was precisely the *lack* of territorial ambitions that allowed the Alliance to wield power successfully even in 1919, at the height of the primacy of sovereignty.

The Paris Peace Conference presented the Alliance with a different international culture than it had encountered in Berlin in 1878. The fractured world of 1878, recognizing a range of different political and social formations, had by 1919 become consolidated. The international culture was organized around the supremacy of territorial statehood, that is, exclusive possession “of proprietary rights over definite portions of the earth’s surface,”<sup>100</sup> and made legal personality and international representation the sole privilege of groups that framed their claims in spatially delimited terms.<sup>101</sup> Reacting to this new environment, the delegates of the Alliance highlighted again and again that their ethnic mobilization, Jewish solidarity, was not a call for national awakening. Sylvain Lévi, a distinguished professor with close ties to the Alliance, declared: “Nations could not be created at will, and the realization of a certain number of aspirations would not suffice to create a national entity . . . .”<sup>102</sup> Eugène Sée, the President of the Alliance, explained his categorical opposition to any Jewish claims for national rights “because the word ‘national’ implies the existence of a nation.”<sup>103</sup> Sée insisted “the business of the peace conference is to create a sovereign state for Poland, not for the Jews.”<sup>104</sup> Since the Jewish people were not a nation, then neither the unity of the Jews, nor their specificity, nor even their progress, required the specific organizational form of Western statehood. In fact, a Jewish state was not only unnecessary, but also delusional and dangerous: Sylvain Lévi explained that he was not a Zionist at all and questioned whether a Jewish home is right for the Jews.<sup>105</sup> Indeed, he went even further, adding that a Jewish state would be perilous as “. . . it would be dangerous to create a

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<sup>96</sup> Fink, *supra* note 42, at 218.

<sup>97</sup> Janowsky, *supra* note 80, at 331.

<sup>98</sup> Fink, *supra* note 42, at 201. On the friendship between Morgenthau and Wilson see Janowsky, *supra* note 80, at 271.

<sup>99</sup> Janowsky, *supra* note 80, at 255.

<sup>100</sup> Thomas Lawrence, *THE PRINCIPLES OF INTERNATIONAL LAW* 136 (1895).

<sup>101</sup> Palmas Island arbitration [Perm. Ct. 4rb. 1928].

<sup>102</sup> Statement by M. Sylvain Lévi, to the Council of Ten in Paris, 27 Feb. 1919, from David Hunter Miller, 15 MY DIARY AT THE CONFERENCE OF PARIS 104, 113 (1925), in Howard M. Sachar, Michael J. Cohen, Isaiah Friedman, and Aron S. Klieman (eds.), *THE RISE OF ISRAEL: DOCUMENTED RECORD FROM THE NINETEENTH CENTURY TO 1948* 235 (1987).

<sup>103</sup> Janowsky, *supra* note 80, at 296.

<sup>104</sup> Minutes of the Meeting, 31 Mar. 1919, CZA A405/77/1B; Adler’s diary, 31 Mar. 1919, in Fink, *supra* note 42, at 199.

<sup>105</sup> Margaret Macmillan, *PARIS 1919* 419 (2003).

precedent whereby certain people who already possessed the rights of citizenship in one country would be called upon to govern and to exercise other rights of citizenship in a new country.<sup>106</sup>

Indeed the Alliance argued that Jewish solidarity was, in fact, the opposite of nationalism in that it was not separatist but rather completely loyal to the state system. In rejecting sovereignty for the Jews, the Alliance stressed its support for the overall logic of states in general and the dependence on land to “produce” political identity. For the Alliance, nations—conceived in a liberal way as a secular political compact between individuals—were a positive fundamental fact of international society, and they labored hard to prepare the masses of Jews to assimilate into their surrounding nations and become productive citizens of their future states.<sup>107</sup>

This group formation—loyal but different—brought to bear the two available concepts of national mobilization and national political determination, but organized them differently, so that exclusive possession over territory was no longer a primary concept.<sup>108</sup> In this, the Alliance displaced the central coordinates of modern belonging—that is, the intersection between ethnicity and territory. By generating a non-territorial Jewish solidarity that preserved the positive vision of ethnic autonomy but abandoned the formation of a nation-state as the collectivity that would generate such autonomy,<sup>109</sup> the Alliance located their network outside of culturally meaningful identity formation within the legal discourse as institutionalized in Versailles.

Thus, despite the fact that the Alliance’s goals were clearly political (striving “to influence the distribution of power”<sup>110</sup> so as to effect the Jewish “status order,”<sup>111</sup>) the Alliance was seen at the time primarily as a private cultural association involved in humanitarian efforts. As a result, it was outside the realm of important considerations for the men assembled in Paris. These men were attempting to achieve the political goal of permanent tranquility, and therefore also the stability of the territorial status quo;<sup>112</sup> to support these goals, they created a new collective

<sup>106</sup> Statement by M. Sylvain Lévi, to the Council of Ten in Paris, 27 Feb. 1919. David Hunter Miller, 15 MY DIARY AT THE CONFERENCE OF PARIS 104, 113 (1925) in Sachar, Cohen, Friedman and Klieman, *supra* note 102, at 235.

<sup>107</sup> The pattern of identity was summed up by Sylvain Lévi who referred to himself as a “Jew by origin and French sentiments above all” or expressed through the devotion of Eugène Sée, the President of the Alliance, to his “*patrie-libérateur*.” France Ministère des Affaires Étrangères, A Paix, process verbaux. 46 Séance [Secret], 27 Feb. 1919, quoted in Fink, *supra* note 42 at 164, 198.

<sup>108</sup> This argument that the Alliance carved out a realm of freedom by repeating the available categories of state/non-state but repeating them wrong, builds upon an argument made by Judith Butler in the context of gender; see Judith Butler, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1999).

<sup>109</sup> On a similar argument in the context of Third World social movements, see Balakrishnan Rajagopal, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORD RESISTANCE 243 (2003).

<sup>110</sup> Max Weber’s definition of “politics.” See Max Weber, *Politics as a Vocation*, in H. H. Gerth and C. Wright Mills (eds.), FROM MAX WEBER: ESSAYS IN SOCIOLOGY 78 (1969).

<sup>111</sup> Max Weber defines political power in the sense of “how power and prestige are distributed between their own and foreign polities.” Max Weber, *Structure of Power*, in *id.* at 172.

<sup>112</sup> Woodrow Wilson, “the prophet of the new era,” was most responsible for pushing forward the doctrine of national self-determination (group identification based on nationalism). His rationale was political—the maintenance of peace. Speaking on January 22, 1917, he said: “No peace can last, or ought to last, which does not recognize and allege the principle that Governments derive all their just powers from the consent of the governed, and that no

institution, the League of Nations. Within this scheme, humanitarian work seemed peripheral.<sup>113</sup> In fact, the framers of this new world order ensured that the League of Nations remained distanced from “the mitigation of suffering,” and left it to the discretion of the member states to encourage the establishment of *other outside* organizations—perhaps through other covenants than the League of Nations Covenant—to do humanitarian work (see Art. 25 of the League of Nations Covenant).<sup>114</sup>

Under this conceptual approach, which underestimated the politics of the private, the political nature of the Alliance remained invisible in Paris. It is because the Alliance appeared non-threatening—private, humanitarian, without territorial ambitions and in support of strong states—that it was able to avoid major confrontation and to exercise considerable influence in the drafting of the Minorities Treaties. Concealed as a private religious association rather than as an ethnic political entity, the Alliance with its Jewish British friends marched “triumphantly through the Paris Peace Conference, routing East European Jewish nationalists and defining minority rights for the peace settlements.”<sup>115</sup>

As in the aftermath of the Berlin Conference, the legal success did not translate into a political victory. The Minorities Treaties did little to protect Jews in the following decades against persecution far worse than any that had preceded it. Not only were the new laws ultimately toothless, but in time the new legal order of nation-state dominance, which the Alliance strongly supported, made untenable the Alliance’s own model of non-territorial ethnic political power.

The conference in Paris brought sovereigns together to build a world government by consent through their collective efforts. The League of Nations, a new international institution, would embody the collective will of the international community and ensure a lasting peace. The international system was now formalized and institutionalized, and the institutional process was based upon the unit of the state. Non-territorial ethnic networks had no place in the League, and would now be formally excluded from standing on international negotiations.<sup>116</sup>

Furthermore, the Minorities system and the supremacy of nation-states led to a configuration of minority existence fundamentally at odds with the goals of the Alliance. While both the minority system and the Alliance were based upon a tension between particular and universal identity, they resolved the contradiction in opposite ways. The comprehensive framework of the minority protection system “sought to maintain a separate social sphere in which the cultural life of a national minority could flourish—without being integrated into the general culture of the state in which the minority resided or being allowed direct representation in the international forum.”<sup>117</sup> But the goals of the Alliance were precisely antithetical to this: it defined Jewish identity in a manner that retained cultural autonomy in a *non-territorial* realm while advocating complete ethnic assimilation with the state structure. This is evident in the position expressed by Eugène Sée, who upheld the “spirit of 1789” and opposed granting special rights to Polish Jews and “erecting

right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.” Macartney, *supra* note 5, at 168.

<sup>113</sup> David Kennedy, *The Move to Institutions*, 8 CARDOZO L. REV. 841, 923 (1987).

<sup>114</sup> *Id.* at 922-923.

<sup>115</sup> Black, *supra* note 84, at 20.

<sup>116</sup> David Kennedy showed that a similar process of exclusion took place with women’s peace movements, which were also rejected from participation in the League of Nations after they worked to institute the League. See Kennedy, *supra* note 112.

<sup>117</sup> Nathaniel Berman, *Modernism, Nationalism, and the Rhetoric of Reconstruction*, 4 YALE J. L. & HUMAN. 351 (1992).

walls” against the majority population.<sup>118</sup>

The Alliance’s support for the Minorities Treaties represented a major capitulation of its core ideology. However, the group sought to retain one key element of its program: that particular political ethnic identity could be expressed non-territorially. This was embodied in the proposal that the Secretariat give minorities a *locus standi* to bring forth claims of abuse.<sup>119</sup> Ultimately, however, the League clearly forbade direct access for aggrieved minorities. Indeed the Minorities system was accepted precisely because it strengthened the state system. Wilson expressed the sensibility that only states could bring forth claims and said that he expected the Jews of Poland to “induce their friends in other countries . . . to draw the attention of the League to their position,”<sup>120</sup> and Lloyd George refused to allow “propagandistic associations and societies from all over the world” the possibility of “flooding the League with their complaints.”<sup>121</sup> The Jews, he thought, “in particular, are very litigious.”<sup>122</sup>

The primacy of the nation-state and the triumph of territorialism as the locus of identity doomed the Alliance’s project in other ways as well. The group’s schools had been active in lands of Islam. Under the millet<sup>123</sup> legal and political system, the rulers of these lands had remained outside the non-Muslim cultural realm. In these settings, which contained no assumption of a universal public realm,<sup>124</sup> the education of local Jews was of little interest to the authorities: one director of the Alliance school in Galata described the atmosphere as “a regime not of independence but of absolute indifference.”<sup>125</sup> Once these lands became states, however, education became an important site for molding the common identity of the citizenry. As an example, one year after its founding in 1923, the Turkish state banned the Alliance schools from maintaining any links with “a foreign organization.”<sup>126</sup> This law effectively ended the legal existence of the Alliance in Turkey, where previously, its schools had flourished for decades.

The power of nation-states was not lost on Jews either. More and more of the Alliance’s students began turning toward Zionism. In 1913, Bulgaria became the first place where the Zionists expelled the Alliance.<sup>127</sup> As Zionism grew in strength, the Alliance drew closer to its French roots, which had originally been only one pole of its identity. With its eye on Greater Syria, including Palestine, France joined

<sup>118</sup> Alliance Israélite Universelle, LA QUESTION JUIVE DEVANT LA CONFÉRENCE DE LA PAIX 38 (1919), quoted in Fink, *supra* note 42, at 149.

<sup>119</sup> The memorandum reads: “[A]ny persons or communities who may suffer from the non-observance of any provisions of this Article shall have the right to submit their complaints to the Executive Committee of the League of Nations, and to seek the protection of that body.” Janowsky, *supra* note 80, at 324-325.

<sup>120</sup> FOREIGN RELATIONS OF THE UNITED STATES (FRUS) PPC, Vol 5, 680-681. 22 Council of Four 91, quoted in Fink, *supra* note 42, at 216.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> On the millet frame of organization and its gradual emergence over the nineteenth century, see Benjamin Braude and Bernard Lewis (eds.), CHRISTIANS AND JEWS IN THE OTTOMAN EMPIRE: THE FUNCTIONING OF A PLURAL SOCIETY (1982).

<sup>124</sup> For the characteristics of the millet system as compared to the nation-state unit of organization, see Nancy Reynolds, *An interview with Aron Rodrigue: Difference and Tolerance in the Ottoman Empire*, 5:1 STANFORD ELECTRONIC HUMAN. REV. (1996), available online at [www.stanford.edu/group/SHR/5-1/text/rodrigue.html](http://www.stanford.edu/group/SHR/5-1/text/rodrigue.html).

<sup>125</sup> AAIU, Turquie XLVII. E., Dalem, 24 Aug. 1882, quoted in Rodrigue, *supra* note 12, at 157.

<sup>126</sup> Aron Rodrigue, *From Millet to Minority, Turkish Jews*, in Pierre Birnbaum and Ira Katznelson (eds.), PATHS OF EMANCIPATION: JEWS, STATES, AND CITIZENSHIP 257 (1995).

<sup>127</sup> For the encounter between the Alliance and the Zionists in Bulgaria, see Rodrigue, *supra* note 12, at 137-140.

the Alliance in opposing Zionist aspirations. France had also internalized the growing myth of Zionism as a German phenomenon, thus hostile to French interests.<sup>128</sup> Closer ties to France eroded the Alliance's authority among the Jews<sup>129</sup> but they pleased the French government, which noted that the organization "had become more and more a real French society."<sup>130</sup> As it drew nearer to the French state, the Alliance moved away from its origin as an autonomous Jewish non-territorial network. By 1920, the Alliance had begun to receive regular subsidies from France and "the independence of the Alliance from official French policy had, by then, become only a relative affair."<sup>131</sup>

### C. Universal Declaration of Human Rights

After World War II, and the "lessons of Munich,"<sup>132</sup> "no one proposed to revive the dead letter of the minorities treaties,"<sup>133</sup> and "most observed that something like the Czech experience would be the inevitable result of such a legal regime."<sup>134</sup> Instead of minorities' rights, on 10 December 1948, the United Nations' General Assembly adopted the *Universal Declaration of Human Rights*. With the Declaration of Human Rights, the focus of international law changed. While in 1919, international law awarded provisions for "minority rights," focusing on *group and collective* rights protection, by 1945, the law centered on "human rights," that is *individual entitlements*. The effect of the *Universal Declaration of Human Rights* was to protect individual freedoms while confirming the stability of state boundaries.<sup>135</sup> Nathaniel Berman explains:

The distinctive blend of international authority and nationalist desire epitomized in minority rights thus could not be resurrected after the war. Rather, they became disjoined from each other. On the one hand, the concern for nationalist desires came to take the form of a right to self-determination redefined as independence within the colonial borders of the non-European possessions of European powers. On the other hand, internationalist aspirations were channeled into doctrines and institutions to protect individual human rights; minority protection survived only in the pallid Article 27 of the Covenant on Civil and Political Rights.<sup>136</sup>

The person most responsible for the draft of the *Declaration of Human Rights* approved by the General Assembly on December 10, 1948 was the renowned judge

<sup>128</sup> Isaiah Friedman, *GERMANY, TURKEY AND ZIONISM 1897-1918* (1977).

<sup>129</sup> For example, a quote from a 1907 book about History of the Jewish People, where the Alliance is defined as a "French site," with "exclusive French leadership and French character." Zosa Szajkowski, *Conflicts in the Alliance Israélite Universelle and the Founding of the Anglo-Jewish Association, the Vienna Allianz and the Hilfsverein*, 19 *JEWISH SOC. STUD.* 46 (1957).

<sup>130</sup> Words of the Quai d'Orsay. 960 *ARCHIVES OF THE MINISTÈRE DES AFFAIRES ÉTRANGÈRES, PARIS (MAE), Guerre 1914-1918, Foreign Ministry to the Ministry of War*, 7 Oct. 1915, quoted in Rodrigue, *supra* note 12, at 156.

<sup>131</sup> *Id.* at 156.

<sup>132</sup> Nathaniel Berman, *International Law of Nationalism: Group Identity and Legal History*, *INTERNATIONAL LAW AND ETHNIC CONFLICT* 53 (1997).

<sup>133</sup> William E. Rappard in 1947, quoted in *id.* at 53.

<sup>134</sup> *Id.*

<sup>135</sup> Claude, *supra* note 47, at 144-176.

<sup>136</sup> Berman, *supra* note 132, at 53.

and jurist René Cassin.<sup>137</sup> Indeed in 1968, Cassin became a Nobel Laureate for his work in drafting the Universal Declaration.<sup>138</sup> What is seldom noted, however, is that René Cassin was also the President of the Alliance Israélite Universelle.

Cassin's interest in individual human rights was due in large part to the case of *Bernheim's petition* in 1933. Franz Bernheim was a German citizen in Upper Silesia who was discharged from his employment in a department-store following the introduction of the Nazi anti-Jewish laws. Bernheim, represented by various Jewish organizations including the Alliance, invoked the protection of the League, which under the Paris Peace Conference had assumed the role of the guarantor of Minorities' Treaties. Since Germany did not sign a Minorities Treaty,<sup>139</sup> the only place in which to publicize the plight of German Jews internationally was in Upper Silesia, a province with its own regional government or council. Bernheim claimed that his dismissal was in breach of the minorities' protection provisions of Part III of the *German-Polish Convention*. As Greg Burges writes, the final report of the Council of the League:

... concluded emphatically that "a mere perusal of the laws and administrative measures" referred to in the petition were in clear conflict with a "number of clauses" of the Upper Silesia Convention. However, because these measures concerned Jewish civil servants, lawyers, schools and universities, the Council found that Bernheim had no valid claim of personal grievance resulting from them.<sup>140</sup>

That same year, 1933, Joseph Goebbels, Hitler's Minister of Propaganda, entered into the assembly hall of the League with his armed bodyguards to express Germany's disdain for the League and to assert its national interests. In October 1933 Germany quit the League altogether.

For René Cassin, then French delegate to the League of Nations, the dismissal of the Bernheim petition demonstrated a lacuna in the scheme of Minorities Treaties, which focused on collective rights of specific communities in specific states but did not address human rights in general: "[T]he petition marked a 'rupture in the vital question of human rights' because it posed this question: was an individual an object of international law, or a 'person under international law,' with obligations but also with juridical protection and the guarantee of rights?" Cassin also noted the simultaneity of Bernheim's petition and Goebbels' entry into the Assembly Hall signaling "his sovereign country could not support any external interference in its policies towards its nationals."<sup>141</sup>

In 1945, after the horrors of the Holocaust, Cassin again served France—this time as a French delegate to the UNESCO conferences and later to the Assembly of

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<sup>137</sup> René Cassin: *The Nobel Prize 1968, Biography*, from Frederick Haberman (ed.), PEACE, 1951-1970 (Nobel Lectures) (1972), available at [http://nobelprize.org/nobel\\_prizes/peace/laureates/1968/cassin-bio.html](http://nobelprize.org/nobel_prizes/peace/laureates/1968/cassin-bio.html).

<sup>138</sup> *Id.*

<sup>139</sup> The regime for the protection of minorities was imposed only on the states of Eastern Europe, Turkey and Iraq—small and weak states considered somewhat backwards and illiberal. Minority Treaties were not imposed on the old established states of Germany, France, Belgium, Denmark and Italy that were presumed enlightened and too noble and too big to be insulted with supervision.

<sup>140</sup> Greg Burges, *The Human Rights Dilemma in Anti-Nazi Protest: The Bernheim Petition, Minorities Protection, and the 1933 Session of the League of Nations*, CERC Working Papers Series, No. 2/2002, available online at [www.cerc.unimelb.edu.au/publications/CERC\\_WPo22002.pdf](http://www.cerc.unimelb.edu.au/publications/CERC_WPo22002.pdf).

<sup>141</sup> René Cassin, *La Déclaration Universelle et la Mise en Oeuvre des Droits de l'Homme*, 2 RECUEIL DES COURS 239, 324 (1952). For a discussion of Cassin's writing, see Burges, *supra* note 140.

the United Nations. There he became the primary author of the *Declaration of Human Rights*.<sup>142</sup> In a later summary of his work for the Declaration, "From the Ten Commandments to the Rights of Man," Cassin's rationale for the Declaration is a perfect expression of the ideology of the Alliance. He echoes the vocabulary of the French Revolution with its emphasis on liberal ideology: "All human beings are born free and equal in dignity and in rights. They are endowed with reason and with conscience, and should act towards each other in a spirit of brotherhood."<sup>143</sup>

Cassin also refers to the work of the Alliance:

To begin with the extension to more human beings: Abbe Gregoire, who played such a considerable role in the Declaration of 1789 and the emancipation of black slaves, in 1791 also succeeded in obtaining the declaration that Jews were citizens with equal rights. Inspired by the same spirit, in 1860 seven French Jewish citizens founded the "Alliance Israélite Universelle" with the aim of extending to all Jews the Rights of Man. Among other things, they were responsible for the provision in the Treaty of Berlin (in 1878) whereby the newly-recognized independent Balkan States, were to confer the nationality of the state, and legal equality with their other nationals, upon Jews in their respective countries.<sup>144</sup>

The Declaration of Human Rights is a true ideological descendant of the Alliance, and its passage in 1945 completes the threefold saga of Alliance involvement in the history of human rights law. At the same time, however, the Universal Declaration of Human Rights also mirrors the earlier political defeats of the Alliance. The Declaration recognizes only two entities—states and individuals. This configuration embodies only one pole of the Alliance's original complex strategy of Jewish existence. While the Alliance did seek emancipation it also invoked "Jewish solidarity"—continual cross-territorial *obligations* within an ethnic entity with a shared collective life in a realm transcending geography and space. By the time of the Declaration's passage in 1945, only the pole of emancipation and complete assimilation into the state structure remained while the second pole of the Alliance—particular ethnic identity with political powers—disappeared. The Alliance had withered and by 1945 was a mere ghost of its former self. Many of the Alliance's European members had been murdered by Hitler, while those in the Muslim East had turned to Zionism. The Alliance no longer had public political capabilities, and was now truly a private cultural association operating in the realm of civil society.

### III. CONCLUSION

The Alliance's legal strategy was spectacularly successful in affecting the development of international law and especially the discourse of human rights. This paper examined how the Alliance invoked the terrain of international law and the vocabulary of rights to set the terms and strategies of their battle to assert Jewish equality in national policies. The Alliance operated during a period of fractured and changing political organization, adapting its stance to work successfully *within* these open-ended and unstable relations of power. A second trait that allowed the Alliance to survive for almost a century as a public political ethnic entity was the particular dual face the network assumed: on the one hand, the Alliance was work-

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<sup>142</sup> Cassin, *supra* note 137.

<sup>143</sup> René Cassin, *Leviticus XIX from The Ten Commandments to the Rights of Man*, speech in France (1969), in René Cassin, *OF LAW AND MAN* (1971).

<sup>144</sup> *Id.*

ing under the shield of the strong French state, while, on the other hand, the Alliance was represented in international gatherings by powerful individuals whose authority derived from their roles in their states. These men, familiar with complex negotiations, were able to seize on the rifts that appeared in the legal and political system and continually situate and re-situate the Alliance in line with the prevailing terms of legal authority, the better to make claims on the law. These successful strategies may help to inform contemporary non-state actors seeking to influence international legal deliberations.

The Alliance, however, was also stunningly unsuccessful in its efforts to achieve its underlying political goals. Lacking “hard power,”<sup>145</sup> the Alliance could pursue its goals only to the extent that its interests coincided with those of the larger community of states. Ultimately, the Alliance failed to make international law an instrument for the protection of Jews. This does not diminish its accomplishments—on the contrary, its leaders built the structure of modern human rights law. Indeed it may be that only a group operating without the corrupting influence of hard power could have advanced this cause as far as it did through sincere, if naive, faith in its basic principles.

Furthermore, it would be wrong to think that the Alliance failed the Jews. The group’s work on human rights law—the focus of this paper—was only one element of its project. The bulk of the group’s efforts were focused on its network of schools, which achieved spectacular success working in many different lands. The schools provided world-class secular education to impoverished and isolated Jewish communities, transforming the economic and social prospects of tens of thousands of Jews. Indeed the Alliance schools unintentionally provided some of the foundations upon which Zionism would later be built, educating and training Jews in Palestine and throughout the Middle East. David Ben Gurion, the first Prime Minister of the State of Israel, said of the Alliance agricultural school in Palestine:

The creation of the State was made possible by the founding of *Mikveh Israel*. If *Mikveh Israel* had not been founded, I doubt that the State of Israel could have come into being. Everything started at that time; we came only to extend the work in its political and national aspects.<sup>146</sup>

Another example is provided by Eliezer Ben Yehuda, one of the teachers in the Alliance school in Jerusalem, who is now commonly known as the father of the Modern Hebrew language.<sup>147</sup> Ben Yehuda took the modern teaching method introduced by the Alliance schools of “French in French” and implemented it to begin reviving and teaching the Hebrew language.<sup>148</sup>

This paper has attempted to retell the story of the development of human rights law through the history of the Alliance. It ends with these two contradictory statements—that of Ben Gurion, the first Prime Minister of the Jewish state, and

<sup>145</sup> “Hard power” is the “command power that can be used to induce others to change their position.” Joseph S. Nye, Jr., *THE PARADOX OF AMERICAN POWER: WHY THE WORLD’S ONLY SUPERPOWER CAN’T GO IT ALONE* 9 (2002).

<sup>146</sup> Interview in *MAARIV*, 12 August 1967, translated in 42 *THE ALLIANCE REVIEW* 33 (Spring 1968), quoted in Silberman, *supra* note 26, at 148.

<sup>147</sup> Yosef Klausner, *ELIEZER BEN-YEHUDA—AGADTA HAIIV V-MIFHAL HAIIV* (h-maqlka lci-nich v tarbot b-gola shel h-histdot a-zionit h-aulmit v-brit ivrit aulamit: Jerusalem).

<sup>148</sup> This unprecedented move toward using the holy language for secular purposes was unavoidable given the mixed ethnic nature of the Jewish population in Jerusalem. The Alliance secular schools were the first to enroll both Ashkenazi and Sephardi students, whose only common language was Hebrew. Eliezer Manneberg, *THE EVOLUTION OF JEWISH EDUCATIONAL PRACTICES IN THE SANCAK (EYALET) OF JERUSALEM UNDER OTTOMAN RULE* (PhD Dissertation) 206-209 (1976).

that of René Cassin, the father of Universal Declaration of Human Rights. Both men understood their projects as outgrowths of the Alliance. By 1945, the complex and contradictory project of the Alliance—to be different yet loyal—had divided into its two original poles. Given the trajectory that human rights law ultimately took, it is logical that the Alliance's own history ends as it does: with a Jewish nation-state for a world of nation-states, where human rights law, however well-intentioned, is incapable of offering true protection for non-territorial communities who suffer economic, societal, or physical harm as a *group*. However, it is worth reflecting on what has been lost along with the dream of the Alliance. The Alliance envisioned a *non-territorial identity* that retained public political content, while remaining completely loyal to the state system. Such a scheme provides ethnic minorities with incentives to move away from fixation over land, and to develop a stronger collective political identity while maintaining a dispersed physical presence. This configuration, to the extent that it is attainable, holds the promise of reduced ethnic strife and more varied and multi-faceted forms of identity. The end of strong transnational institutions such as the Alliance propagated the abandonment of this dream, leaving self-determination and the drive for territory as the only remaining avenue for minorities to gain legal status and thus, political visibility.