

Democratic Reconstruction in the Balkans

*Edited by
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Centre for the Study of Democracy

UNIVERSITY OF WESTMINSTER



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Abbreviations

AI	Amnesty International
ATM	Autonomous Trade Measures
BBC	British Broadcasting Corporation
CARDS	Community Assistance for Reconstruction, Democratization and Stabilization
CFSP	Common Foreign and Security Policy (of the European Union)
DP	Democratic Party (Serbia)
DPS	Democratic Party of Serbia
DPSPM	Democratic Party of Socialist Montenegro
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention on Human Rights
ECMM	European Community Monitoring Mission
EPC	European Political Co-operation
EU	European Union
FRY	Federal Republic of Yugoslavia. Proclaimed on 27 April 1992 by Serbia and Montenegro. The new federation's claim to be the successor state of the SFRY was rejected by the United Nations, the European Union and the OSCE.
FYROM	Former Yugoslav Republic of Macedonia
GNP	gross national product
IMF	International Monetary Fund
IRA	Irish Republican Army
KFOR	Kosovo Force
MAAK	Movement for Pan-Macedonian Action
MIC	Macedonian Information Center
MILS	Macedonian Information and Liaison Service
NATO	North Atlantic Treaty Organization
NPR	National Public Radio (USA)
NYT	<i>New York Times</i>

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OECD	Organization for European Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe (formerly the CSCE)
PBS	Public Broadcasting Service (USA)
PDA	Party of Democratic Action
SAA	Stabilization and Association Agreement
SFOR	Stabilization Force
SFRY	Socialist Federative Republic of Yugoslavia. Established under the last, 1974 Federal Constitution, the SFRY was made up of six republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia) and two 'autonomous provinces' in Serbia, Kosovo and Vojvodina.
SPPM	Socialist People's Party of Montenegro
SPS	Socialist Party of Serbia. The renamed League of Communists of Serbia.
SRM	Serbian Renewal Movement
SRP	Serbian Radical Party
SSRN	Socialist Federation of the Working People
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VMRO-	Internal Macedonian Revolutionary Organization –
DPMNE	Democratic Party for Macedonian National Unity
WEU	West European Union

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Introduction

Margaret Blunden

The essays in this book derive from a British Council-sponsored conference held in Budva, Montenegro, in January 2000, which brought together scholars from a variety of countries and disciplines to reflect on the issues of democratic reconstruction in the Balkans. These reflections were written during a particularly bleak period in the painful history of South Eastern Europe, less than twelve months after the war in Kosovo and Yugoslavia, and less than twelve months before the changes which removed President Milošević from power in favour of a legitimate, democratic government. The papers provide enduring insights into the daunting task of democratic reconstruction, now just beginning in taxing political and economic circumstances in this turbulent region of Europe.

Two transitions are underway in South Eastern Europe (as they were in the previous decade in Central Europe and the former Soviet Union): from a command to a market economy and from communist authoritarianism, in its varying forms, to liberal democracy, civil society and the rule of law. The participating scholars were able to draw on a rich body of research about earlier experience in Central Europe and the former Soviet Union, and indeed studies of the still earlier democratic transitions in Southern Europe and Latin America. This body of research points to the immense complexities of the transition process, particularly when the preceding regime was communist as well as totalitarian. Earlier studies, notably those of Linz and Stepan, had documented the much greater difficulties of democratic consolidation when the previous regime was communist totalitarian, rather than right-wing authoritarian with a functioning mixed economy and the structures of private ownership intact.¹ The complexities of the relationship

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between political and economic reform – identified by Ralf Dahrendorf elsewhere as ‘one of the most vexing issues of modern history’ – are of course compounded in the case of South Eastern Europe by a decade of state disintegration and inter-ethnic violence.²

Ljubomir Madžar, in the first of two contributions addressing the compatibilities and incompatibilities of economic and political systems, points to the avalanche of recent research indicating that political democracy and the market economy, on the one hand, and political authoritarianism and the command economy, on the other, are functionally related. A democratic polity provides the necessary legal framework and public goods for a market economy, and the market economy generates the free and responsible individuals necessary for the democratic process. Each cannot develop and function normally without the other. Although there is some room, Professor Madžar acknowledges, for varying political and economic institutions worldwide, certain combinations – specifically, democracy or quasi-democracy with a multi-party political system plus collective ownership – are not sustainable.

Milošević’s Yugoslavia was, he suggests, a rare and indeed unprecedented example of just such an excluded combination. In this situation, the political actors are extremely unequal in resources, power and political influence. The party in power in a state with a collective economy controls all the economic, social and communications resources of that state. It has the capacity to buy off small and weak opposition parties. Having acquired political monopoly, the ruling party can break the laws and constitution without fear of electoral repercussions. Milošević’s Yugoslavia was, Professor Madžar argues, the most salient example in Europe of a notionally multi-party state in which the government had acquired a dominant position by ‘electoral capture’. In such a situation, any attempt to maintain the combination of political democracy with collectivized property leads to economic ruin. Since the politicians in power control all the nation’s resources, they can win political support in elections by allowing voters to consume the available capital, productive or otherwise. ‘The incumbent party makes it politically possible for the electorate to consume capital ... the available capacities are gradually wiped out and inherited capital disappears.’

It seems obvious now, although it was far from obvious when this paper was written, that the Milošević regime’s combination of quasi-democracy and collective ownership was politically unsus-

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tainable. The extent of the economic ruin caused by that electoral capture is only now becoming apparent. This is the devastating legacy of the new government as it attempts to consolidate the democratic transition of Autumn 2000.

Margaret Blunden, considering the state and the market as different forms of regulation – one a form of conscious human control, the other not – also accepts the necessity of some form of market economy for the sustainability of democracy, and the incompatibility between a command economy and a democratic state. Autonomous production units are necessary to counterbalance the power of the state, and economic decentralization is a precondition of civil society. A substantial separation of power and wealth is an essential attribute of the democratic state; it must be possible for free citizens to become prosperous without first becoming powerful. However, the conditions in which a free market may operate are highly artificial. State regulatory capacity of a high order is necessary both in order to create and to maintain the regulatory framework on which the market economy necessarily rests, and to curtail the massive disruption – so severe that no genuine democracy would tolerate it – which unfettered market forces release. All this has implications for the sequence of reforms. Establishing the rule of law and a sound regulatory framework for both politics and economics must be the first stage; this must take precedence over free elections. Free markets and the economic benefits they can bring are some way along the line. Political change can be rapid, as the startling events surrounding the October 2000 elections in Yugoslavia have demonstrated. Economic benefits are slow and long term. The mismatch between the heightened expectations generated by a democratic uprising and the long-delayed fruits of political and economic reform is the most serious challenge facing Yugoslavia.

From politics and economics, the state and the market, we turn to politics and sociology, the state and society. In Vukašin Pavlović's view, civil society, like the market, needs the state. The state needs civil society as a counterbalancing influence, if it is not to become oppressive. The complementary relationship between the state and society is, however, rarely symmetrical or balanced. It is in its nature to be asymmetrical and unbalanced.

As Professor Pavlović demonstrates, Yugoslavia belongs to that class of countries historically oriented far more towards the state than towards society. The political culture of the region has been one of strong, arrogant, irresponsible states and weak and power-

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less societies. South Eastern Europe as a whole missed out on the three main historical movements which he identifies as the seedbeds of civil society: the Renaissance (particularly Machiavelli), the German guild system, and Anglo-American liberalism (particularly Ferguson, Smith and Paine). For a brief interlude, however – during the second half of the nineteenth century – liberal European political and democratic ideas flourished in Vojvodina, then part of Austria-Hungary; and a wide franchise was introduced in Serbia in 1869, several years earlier than in France or Germany. The reign of Petar Karadjordjević, from 1903 to 1914, is now regarded as the golden age of liberal democracy in Serbia. However, the dominant tradition by which the solutions to all problems are sought in a strong state soon reasserted itself. Marxism, of its essence, disrupts the delicate relationship between the state and society. Marxist theory abolishes the distinction between the state and society: the state is the only representative and interpreter of society. Society, which Marx assimilated to bourgeois society, is completely overlain by the state. Socialism stifled civil society, and was exceptionally resistant to change. As Michael Oakeshott observed in 1947, tradition is pre-eminently fluid, whereas ideological politics are rigid and fixed in character.³ Professor Pavlović observes that the inherent rigidity of ideology applied even in Yugoslavia, which had a greater openness to the West than had the rest of Eastern Europe and the Soviet Union, and which played a pioneering role in attempted reforms oriented to self-management and the market. The uneven distribution of influence, within the Socialist Federative Republic of Yugoslavia (SFRY), of ideas of civil society was, he argues, one factor in the country's disintegration as well as in the process by which the country dropped within the space of a few months from being the leader of the countries in transition to the bottom of the heap. The rest of the then Yugoslavia was repulsed by the many civil and democratic ideas coming from Slovenia. Since the political and social forces in other Yugoslav republics were not ready to accept its three basic demands – political pluralism, the rule of law and the project of an independent public sphere – the Slovene civil society project became increasingly isolated, and began to merge with the concept of national independence. In that process, he argues, the distinction between civil society and the state in Slovenia was once again blurred.

In the ensuing disintegration of the SFRY following the successive secessions of Slovenia, Croatia and Bosnia-Herzegovina, peace, the *sine qua non* of civil society, was destroyed. Intellectuals

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themselves, Professor Pavlović suggests, bear no small responsibility for fomenting the hatred which fed the accompanying violence. Milošević's successors have, in consequence, inherited in Serbia a suppressed civil society, a civil society in deep shadow.

Gjorge Ivanov addresses the issues of state–society relations in a democratic transition from a Macedonian perspective, and his analysis, as presented in January 2000, does much to illuminate the subsequent tragic developments in his country. Macedonia was the poorest and weakest country to emerge from the break-up of Yugoslavia. Here, as elsewhere among the transition states, the gap between immediate expectations – political and economic – and intractable realities threatened to produce a rejection of the democratic transition itself. The legacy in Macedonia, as in Serbia, was one of traditional subservience to a strong state, in this region of Europe where Enlightenment thinking had but the weakest echo. In Macedonia this legacy was compounded by the historic view of authority as an alien occupying force. Communism in this part of Europe, Ivanov argues, absorbed many patriarchal, authoritarian and militaristic elements in the culture of these countries. 'Marxism-Leninism was close to some pre-modern forms of political culture, which are incompatible with civil political culture.' Demands that the holders of power understand and legitimize themselves as representatives of the interests of all citizens do not come easily in this context.

The creation of civic identity and civil society in a multi-ethnic state such as Macedonia is complicated by the fact that ethnic identity penetrates more deeply into people's everyday life than does civil identity. It is clear that, in Macedonia, what Linz and Stepan call the 'stateness' problem raises its head in an acute form, and the handling of the 'triangular relationship' between stateness, nationalism and democracy poses particular challenges.⁴ Ethnic affiliation, which is stronger than civic identity, threatens to bring about the 'ethnicization' of the state and the marginalization of ethnic minorities. The standing temptation for politicians, needing to consolidate relations between the individual and the state, is to ethnicize the state, to co-opt ethnic affiliation in the interests of state solidarity. It is much easier to replace class-based ideology with ethno-national ideology than it is to follow the demanding and difficult path of generating civil consciousness and the liberal values of cultural heterogeneity, individualism and personal autonomy. In Macedonia, as in other former communist multi-ethnic states, it seems that democracy allies itself much more easily with

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ethnic exclusivity than with the liberal values of tolerance and diversity. The ethnically excluded are, in consequence, driven to reject the legitimacy of the state.

Joseph Julian, of the Maxwell School of Citizenship and Public Affairs at Syracuse University, writes from within the perspective of community politics of the citizens' own role in helping to meet their own expectations. It has, of course, been acknowledged for some time as 'a commonplace of modern political thought that the democratic process needs to be opened up to involve wide sections of the populations more directly in decision making'.⁵ Dr Julian argues that this is most particularly the case in transitional and emerging democracies, where some politicians unfortunately understand democracy solely as an adversarial system. It is necessary systematically to encourage local people to take on more responsibilities themselves; this is particularly so in circumstances such as those prevailing in South Eastern Europe, where the stresses associated with political and economic change are particularly severe, where privatization and liberalization will inevitably be unsettling and disruptive, and where there is a pressing need to heal the wounds of conflict. In these circumstances it is particularly unfortunate that the relationship between powerful Western policy makers and the new democratic governments of East-Central Europe can be seen as a further elaboration of Schumpeter's theory of élitist democracy. Demands from Western policy makers that societies in transition comply with austerity programmes, privatization schemes, and an ongoing reduction of social welfare programmes have prompted a growing backlash in the countries of East-Central Europe against the Western powers in general, and the European Union in particular. After the fall of Milošević has removed the last organized governmental resistance to Westernization, and opportunities for region-wide development under European Union leadership finally beckon, this warning is particularly weighty.

Vojislav Stanovčić explores the complexities of building democratic and genuinely multi-ethnic states on the foundations of a socialist past. His chapter, 'The Rule of Law and Civil Society', underlines the point that most post-communist societies are endangered by, or already find themselves under the rule of, regimes of authoritarian nationalism, in which the state is treated as an embodiment of the national spirit. Unless it is possible to create a civil society, he argues, one monolithic system will simply be replaced by another: the 'higher interests' of the working class will be replaced by the 'higher interests' of the nation. Without civil

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society, Professor Stanovčić concludes, there will be no democracy. And without the rule of law there will be no civil society. A vicious circle operates here, a paralysing self-contradiction, and the way out is not in sight. Democratization and the transformation of post-communist societies cannot be carried out without establishing autonomous civil societies. This takes time, effort and the support of those in power. This last is the most difficult to achieve, since it requires, paradoxically, that politicians themselves promote and encourage limits to their own authority.

Democracy itself, particularly in the presidential form – which has, not by chance, been introduced in preference to the parliamentary in all the former communist states – is, Professor Stanovčić suggests, no guaranteed protection against the arbitrary exercise of power. The rule of law, the independence of the judiciary, and the separation of powers are necessary prerequisites of democracy. Democracy must be limited by laws, its power must not equate to the unlimited momentary will of the majority. Each government must be restrained, including the government of the people. Democratic participation, mass support, and popularity are a necessary but not a sufficient condition of the legitimization of authority. The laws themselves, to which the powerful as well as the powerless should necessarily be subject, are legitimate only if they accord with the principles of natural justice. The ‘rule of law – a framework of impersonal, objective, rational rules – was meant to replace the rule of men ... These rules, which assume the existence of human or ethical values, provide guarantees against the arbitrary exercise and abuse of power.’

Where Professor Stanovčić focuses on constitutional law and democracy, Vladimir Goati concentrates on constitutional law and stateness. Problems of stateness within the Serbian and Montenegrin constituents of the Federal Republic of Yugoslavia (FRY) derive, Professor Goati argues, from linked atypical and incomplete constitutional developments after the end of the Cold War. He points out that, unlike in most post-communist countries of South Eastern Europe, the establishment of democratic institutions in Serbia and Montenegro in 1990 did not occur as a result of pressure from below, but of decisions taken by the ruling communist parties of both republics. Unlike in most other countries in the region, this first peaceful change of government was not completed. Inconsistencies between the new constitution of Serbia, adopted in 1990, and that of the Federal Republic of Yugoslavia, adopted in 1992, meant that the legal system of the federation could not be

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described as a 'logically ordered and non-contradictory body of mutually dependent norms'. Opposition parties were systematically excluded from the decision-making processes in both Serbia and Montenegro in the formative phase – in 1990 – of what was meant to be a new democratic order. Opposition parties from both republics were also excluded from the decision-making processes leading to the establishment of the Federal Republic in 1992, following the break-up of the former Yugoslavia, which was, again, unlike the practice in most other post-communist countries of South Eastern Europe. The systematic marginalization of the opposition – which endured in a much more acute form in Serbia than in Montenegro – led to what is described as a system of 'polarized pluralism' in Serbia, compared with a system of 'moderate pluralism' in Montenegro. Professor Goati charts the growing tensions between the two republics, as the Serbian regime deployed a whole range of pressures violating the federal constitution and many of its laws. Montenegro was marginalized both in the federal assembly and the federal government, and subsequently refused to enforce the decisions of the federal government. The 'stateness' problem of the federal republic was further hindered by the fact that the parties of the Albanian national minority – making up almost one-fifth of the population – challenged the existence both of Serbia and of the Federal Republic of Yugoslavia as 'political communities'. This analysis goes a long way to explaining the exceptional severity of the 'stateness' problems currently facing Yugoslavia, quite apart from the Kosovo question.

Slobodan Samardžić also argues that questions of constitutional law bear strongly on problems of the legitimacy of the state in Serbia. He suggests that Serbia faces peculiarly unfavourable conditions for constitutional development, far more complex than is the case in most of the states in Central and Eastern Europe that have entered the phase of post-communist constitutionality. The constitution in place during the Milošević regime could not provide two basic constitutional goals: guarantees of basic rights and freedoms and the limitation of political power. But the fall of Milošević has not solved the central constitutional challenge in Serbia: how to provide for the relationship between the Serb majority, on the one hand, and a number of ethnic minorities, on the other, all of whom display widely differing attitudes towards the legitimacy of the state.

The largest minority, the Albanians, concentrated in the province of Kosovo, have manifestly rejected the Serbian state.

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Elsewhere Muslims – who have recently begun to call themselves Bosniaks – concentrated in the Raška region, demonstrate ambivalent and conditional loyalty to the state. The Hungarians, concentrated in northern Vojvodina, are generally loyal to the Serbian state, but express clear demands for the protection of their minority rights. Smaller minorities, such as the Romanians, Bulgarians, Slovaks, Romanies and Turks, profess complete loyalty towards Serbia. The constitutional challenge, Professor Samardžić believes, is to reconcile the heterogeneity of Serbia, in which all ethnicities enjoy basic human rights and equalities with other citizens, with the state-making aspirations of the Serbian nation. Serbs, unlike each of the minorities (except the Romanies), have no other nation-state elsewhere. Individual citizenship rights must be accompanied by collective rights and state protection for the status of minorities. The concept of the nation-state remains the most democratic form of political community, even if the population is heterogeneous ethnically, provided that minority representatives participate in the process of constitution building and thus convince their communities of the constitutional legitimacy of the state. Only by these means, Professor Samardžić argues, can cultural and ethnic groups evolve into a political people, capable of debating and reaching agreement on general rules of political behaviour.

Svetozar Stojanović's chapter, 'Nations, Nationalism, and "Citizenism"', tackles the commonly held idea that, since massive cultural-ethnic nationalism was a major factor in the tragedy of the SFRY and the Federal Republic of Yugoslavia, civic nationalism is by definition always benign. Undoubtedly, he concedes, the civic principle of 'one citizen, one vote' stands as an immense achievement of modern civilization. But civic nationalism, like ethnic nationalism, may degenerate into a negative form, in which self-identification and loyalty to one's own (civic) nation become more important than considerations of justice and morality. In the international arena, negative civic nationalism may take the form of assertions of national interest which override considerations of justice, morality, or even consistency. He cites American national interest, little questioned as the determining influence on American foreign policy. This national interest is manifest, he argues, in such inconsistencies as simultaneous American support for some nationally based secessions in Yugoslavia and resistance to nationally based demands for a Kurdish state; this is civic nationalism in a negative form. Many Americans exclude the possibility of American nationalism by definition, because they recognize only cultural-ethnic, not civic, nationalism.

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Professor Stojanović also suggests that an exclusive insistence on citizenship as the only principle of state organization and legitimacy can also take a repressive form in domestic affairs. In multi-national states such as the FRY, Bosnia-Herzegovina and Macedonia, those parties that combine the citizenist and the cultural-ethnic approach to the organization and legitimization of the state are least likely to fall into repressive negative nationalism.

The contributors to the last part of the book introduce other factors bearing on the democratic reconstruction in the Balkans, and take in the wider European context. Colin Sparks explores the relationship between the media and democracy in East-Central Europe since the end of the Cold War, and reflects on questions of the relationship between politics and economics, political power and social power, and on differing concepts of civil society. Democratic reformers in Poland, Hungary, and in the Czech and Slovak republics looked for inspiration towards an idealized and over-simplified version of the Western situation, in which, they believed, mass media were autonomous in their editorial policies. Although the current situation is far more open than during the communist period, the picture, Professor Sparks believes, differs widely from this idealized model. Both the press and broadcasting remain partisan, sometimes extremely so, senior broadcasting appointments are politically determined, and bias in news is commonplace. And readership has fallen dramatically. Why have such noble dreams had such squalid outcomes? The reasons advanced here relate to the differing theories of civil society prevalent after the Cold War, and the practical implementation of a model based on the classical Hegelian notion of civil society as the realm of the pursuit of private profit, rather than of a model of civil society as voluntary organizations of citizens coming together to advance their interests and counterbalance the power of the state. In post-communist Europe, Professor Sparks asserts, civil society has meant capitalism, red in tooth and claw. On the one hand, privatization of the media has failed to sustain any substantial separation of power and wealth, identified by other contributors to this book as a key feature of civil society. On the other hand, newspaper readers have been transformed, with scarcely a pause, from the objects of political indoctrination into the objects of commercial exploitation. A further obstacle to realizing the idealized model of the Western media was the negotiated character of the transition process. The social élite survived the political changes. As a result, many positions of social power were in the same hands as before, and the general outcome was an interplay of social forces sometimes

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termed 'political capitalism', a form of social domination in which there are close alliances and mutual support between the holders of political power and the holders of economic power. The only hope for a genuinely democratic media lies with those people who provided the driving force for sweeping political change, and were subsequently excluded from the transition process in the interests of an amicable settlement amongst élites. Professor Sparks's robust analysis, controversial as it is in many respects, does unquestionably illuminate the daunting nature of the task facing those who hope to create genuinely democratic media in the even more difficult circumstances of South Eastern Europe.

The interlinked process, not of media and democracy, but of development and democracy, is the focus of concern of Djuro Kovačević, director of the Institute for European Studies in Belgrade. The Europeanization of the Balkans means for him an inextricably interlinked process of democracy and development. He, like other contributors, notes that political change – the transition to democracy – generates enormous expectations of rapid development. 'Democracy is expected to overcome backwardness and the crises of development, to bring about modern and successful economic development.' Economic development is, therefore, an inseparable element in democratic transformation. Balkan societies, like others, cannot develop in isolation. Professor Kovačević couples development with Europeanization and argues that Balkan readiness for development and Europeanization is not negligible. Despite serious economic crises in post-communist Balkan countries, there is a noticeably increased acceptance of the market economy. Despite the brutal wars which have torn the region apart, there is hope for renewed regional co-operation. With an optimism and vision extraordinary for the bleak circumstances of early 2000 – the Milošević regime was apparently irremovably in power in Belgrade, and economic Balkanization was being rigidly applied among the still fragmenting successor states – Professor Kovačević urges that the confrontations triggered by the dissolution of the SFRY could be replaced by competition and co-operation for the development of the Balkans. He implicitly recognizes that reversing the economic fragmentation associated with the political fragmentation of the 1990s is a *sine qua non* for the economic development of the region. Without some measure of economic reintegration, the economic expectations of citizens cannot be met and the democratic transitions of individual states will inevitably be fragile.

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Richard Whitman, while charting substantial evolution in European Union (EU) policy towards South Eastern Europe as its 'near abroad' during the past decade, sees considerable shortcomings still to be addressed. To judge the European Union's record in the conflicts which racked the Balkans in the 1990s as inadequate would be being tactful. Crises are foreign policy events to which the EU is least equipped to respond. This is the case even though, as Dr Whitman argues, the prime motivator for EU involvement in South Eastern Europe is the neutralization of security threats. EU policy, concentrating on the non-military role to which it is best suited, reached a level of maturity familiar in other regions, incorporating trade and aid measures and the commitment to an institutionalized relationship with the region. Conditions are imposed on all South East European countries seeking a more developed relationship with the EU. Whereas Joseph Julian construes the EU-regional relationship as élitist and dictatorial, Dr Whitman sees its main shortcomings in this instance as ineffectiveness. The tools which the EU has at its disposal have not been utilized fully or with sufficient urgency. The EU's financial contribution to the region in the recent past had been derisory. Improved terms of trade were needed. The EU itself has been 'hamstrung because of poor co-ordination and communications and bureaucratic obstacles'. Dr Whitman does, however – in an echo of Joseph Julian's perspective – refer to the criticism by the United Nations Economic Commission for Europe of the large gap between funding pledges and actual disbursements, and to the EU's failure to take account of the importance of national programmes in promoting the regional integration to which it is formally committed.

Conclusion

Rebecca West, unique among West Europeans in her understanding of the Balkans, observed more than half a century ago that, 'So far the history of Belgrade, like many other passages in the life of Europe, makes one wonder what the human race has lost by its habit of bleeding itself like a mad medieval surgeon.'⁶

Self-flagellation everywhere in the Balkans – and particularly in Serbia – has made this region a focus of European, American and world attention during the past decade. Successive interventions, by individual West European states, by the European Union, by the United States, and by NATO, have, in their partially informed and conflicting ways, too often seemed more part of the problem than

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part of the solution. A sound, informed and consistent Western policy, supported by appropriate financial measures, remains vital for the democratic reconstruction of South Eastern Europe. Consolidated democratic reconstruction is impossible in conditions of isolation. But to translate the great disparities in power and economic strength between Europe and the West, on the one hand, and the states of the region, on the other, into a master-servant relationship, however veiled by diplomatic niceties, is entirely counter-productive. As this book in its small way illustrates, the intellectual and moral resources within the region itself are formidable. It is on the strength of these that the future of the region rests.

Notes

1. Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation*, Baltimore, MD and London, Johns Hopkins University Press, 1996, p. 64.
2. Ralf Dahrendorf, *Reflections on the Revolution in Europe*, London, Chatto and Windus, 1990, p. 76.
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1

The Interdependence of Political Democracy and the Market Economy

Ljubomir Madžar

The Complementarity of the Political and Economic Spheres

In any society the political and economic spheres are interdependent. It is generally accepted that a market economy is naturally compatible with liberal democracy, whereas collective ownership appears to be compatible with authoritarian political structures. János Kornai proved that there is an affinity between, respectively, collective ownership and the administrative and bureaucratic co-ordination of economic decisions, and private property and market mechanisms.¹ It is a short step to assuming that the market and liberal democracy are complementary and that there is a logical and functional affinity between a collectivized economy and authoritarian political practice. Francis Fukuyama has emphasized recently the links between models of economic organization and types of political governance.² He concludes that a deep-seated congruence between the two spheres can be logically derived and even empirically observed. An avalanche of recent writings on the transition from administratively managed and bureaucratically co-ordinated economies to market systems emphasizes the complementarity of market reforms and the process of political democratization.³

A more detailed examination demonstrates that various degrees of congruence can be identified even within broad, mutually compatible economic and political institutional arrangements. In his classic work on political and economic order Friedrich von Hayek elaborated the proposition that, in a general sense, democracy is market-friendly, but that not all types of democracy are equally compatible with the market order and individual liberties.⁴

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Following de Tocqueville and other early social philosophers, he emphasized that constitutional constraints on all important social matters and on the democratic process itself are a lasting guarantee of individual freedoms and of the autonomy of economic agents. A market economy is obviously unthinkable without such rights and liberties. Liberal democracy thus appears to be more congruent with the market economy than does social democracy. The latter implies greater state intervention; this would disturb a number of arrangements without which markets cannot function properly. Particularly damaging is state interference in the scope and clarity of – and therefore the weakening and dilution of – property rights (the ‘attenuation of property rights’, as it is known).⁵ Thus, while the market system goes hand in hand with democracy, within the broadly defined class of democratic political arrangements the most market-friendly arrangements are those which emphasize a minimal state. This state will, at the same time, be strong within its sphere of competence and extremely efficient in safeguarding the institutional prerequisites of the market system.

What do a polity and an economy require from each other? In an economic system based on collective property the political leadership expects and obtains complete control over economic resources and processes, as well as the bureaucratic compliance of all layers of the ruling hierarchy with its commands. The economic sphere expects to receive – and does so – instructions in the form of orders and commands; it also expects to be able to prove its compliance – in the form of reports that are sent up the hierarchy – in fulfilling these orders.

A democratic polity needs support from a market economy in the form of free and independent individuals. These individuals must enjoy constitutionally defined and guaranteed areas of lasting and inalienable autonomy so that they can enter economic transactions as equals guided by their individual interests and making decisions on the basis of free will. The market must provide an economic framework within which these individuals can be both free and responsible. The consequences of their decisions have to affect them as bearers of decision-making authority, and the risks implied by those decisions must affect their own property rather than being borne by society. It is also the job of the political system to create the institutional conditions in which the market functions so that market agents will be oriented towards production rather than redistribution: they should earn their income by creating new values rather than by appropriating values already created by

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others; this will make it impossible for exploitative rent-seeking to become a dominant mode of economic behaviour.⁶ In brief, the market is a precondition for a healthy democracy inasmuch as it creates free and responsible individuals; only such people can participate meaningfully in the democratic political process.

The political system's input into the market – hinted at above – is to provide clearly defined and strongly protected property rights and effective protection of contracts. For this a well organized, well staffed, properly paid and highly efficient judiciary is needed: a competent and productive judiciary not only solves the cases that come before it with reasonable speed and fairness, but also profoundly affects the many disputes settled out of court. In addition, one of the economic conditions that the political system – and the state as its operating agency – must provide is a stable currency. A further requirement the market economy has of the state is the provision of key public goods which the economy is unable to provide by itself. But the important thing to remember is that the integrity of basic market categories depends crucially on the state discharging its functions reliably and to a high standard. Thus, property is property in its real sense only to the extent to which it is protected by the state. Inadequately protected property – with the clear implications this has for the integrity and workings of the judiciary – belongs effectively to no one; legally and judicially unprotected property encourages an inefficient use of resources as much as – or even more so than – does collectively owned property. This is why many countries with nominally private ownership have poor markets and miserable economic performance. As van Brabant has asserted recently, the state appears to be the most important market institution!⁷ What has traditionally been considered the antithesis of the market has come to be accepted as a basic precondition of its functioning and, in certain areas, of its very existence.

Enough has been said to conclude that a market economy cannot exist and develop in conjunction with an *arbitrarily* chosen type of state. It has also been demonstrated that political democracy cannot survive, let alone flourish, in a randomly selected economic institutional framework. If the organizational models in the economic and the political sphere are incompatible, the efficiency of both subsystems could be seriously impaired; society as a whole might even suffer an institutional breakdown. Yugoslavia appears to be a particularly salient example of a country with mismatched models of economic and political organization. It is to this bizarre case, this maverick among nations, that we now turn.

*18 / Democratic Reconstruction in the Balkans***The Structural Failure of the Political System**

Political systems, particularly their electoral segments, appear to be subject to a normative requirement similar to a normative desideratum widely accepted for market economies: namely that, to a high degree, they should be regulated by competition. No actor should be so big and powerful as to be able to influence and control the general conditions under which the competitive struggle takes place. These general conditions define the environment within which the actors perform their functions, pursue their objectives and produce results. The issue was clarified in economics long ago: one of its theoretical pillars is the theorem according to which, under a number of precisely specified conditions, competitive equilibria have the normative characteristics of Pareto optima.⁸ The converse theorem – that Pareto optima are supportable by a set of prices and thus figure as competitive equilibria – has also been proved. Monopolies, on the other hand, produce suboptimal allocations – because, by comparison with competitive equilibria, they generate higher prices and lower quantities. An analogous proposition – which could be demonstrated in various ways – undoubtedly holds for political systems. The actor who can control the conditions under which all relevant agents pursue their objectives and perform their functions will undoubtedly attempt – with some success – to change the decision-making environment so as to realize his objectives at the expense both of other agents and of the general public. One agent will achieve his goals illegitimately; particular interests will prevail over the common good. This is obviously more damaging than is a monopoly in the economic sphere because the agent who prevails in such a way gains command over the instruments of governmental policies, which implies discretion with respect to the use of coercion. The authority to coerce thus derives from an imperfect mechanism of power allocation which does not satisfy the usual competitive conditions.

The Yugoslav political scene is characterized by the dominant position of one political organization, the Socialist Party of Serbia (SPS) (its sister party, the Yugoslav Left, has the same strategy and co-operates closely with it in exercising firm control over state and society). The coalition of the parties controlling the country at present also includes the Serbian Radical Party (SRP) – the Serbian radicals, as they call themselves – but, despite the ideological differences between the first two parties and the radicals, there have been no obvious changes in how the country is ruled. The coalition's policies have become more nationalistic (or patriotic, as the

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coalition prefers to put it), but this does not appear to be much of a sacrifice for the first two parties: they have frequently used nationalism as a convenient way to mobilize people politically. The issue that needs to be examined is how these two parties acquired so much power and trapped the country in a dead-end of authoritarian rule. I call this dead-end 'electoral capture'.

Several factors explain the asymmetry in the Serbian political system. To begin with, unlike most other communist parties in post-communist societies, the Serbian communists – the League of Communists – did not dissolve themselves and leave to the newly emerging parties a roughly even playing field on which to initiate the new democratic political process. Instead, they merely changed their name – to Socialist Party of Serbia – and made minor organizational modifications to the party. The SPS inherited vast resources, as well as many instruments of political power, from the communist party. Among the latter are a huge and widespread organizational framework, politically experienced and technically educated cadres, physical structures and equipment, and substantial financial resources. The other parties did not inherit any of the League of Communists' resources. As a result, at the beginning of the post-communist era power and resources were distributed quite unevenly among the actors on the political stage: at the centre of the stage was Goliath, and around him a large number of puny Davids.

But that is not the whole story. The country essentially inherited the old institutional framework – in the economic sphere and in other spheres – based on collectivized ownership. The only major difference was the formal – but, at the same time, to a substantial degree real – dismantling of the system of self-management.⁹ The combination of a system of collectivized property and the absence of management created an ideal situation for the political ruling élite to exploit: they gained control of the country's economic and financial resources. By gaining command over the economy and finance, the élite acquired control over other areas of social life, such as health, social insurance, educational system, culture, and sports. It even acquired control over a number of organizations in civil society. The ability to control and allocate scarce jobs was very important: in an impoverished society – Yugoslavia had had a high unemployment rate for decades – it was a means of acquiring supreme control over the lives and destinies of millions. Particularly important was the élite's control of the media: these were used unscrupulously to build up political support for the ruling parties

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and to control, to the point of direct engineering, the political attitudes of the populace.

The ruling oligarchy thus created a situation in which it was able to control the electorate, rather than the electorate controlling it. There have not been, and there are not now, any constraints on the amount of money that a political party is allowed to spend on promoting itself. Moreover, the channels through which most of the money used to finance the parties was acquired were not 'transparent'. This was paradise for the SPS: the master of the economy and other spheres was in a position to take as much as it needed to support its activities financially and to strengthen its grip on the political life of society. No other party was in that position; it was, indeed, hard to imagine how any other party could effectively compete with the SPS and eventually acquire political control over society. The political destiny of the country was sealed and the élite in power became irreplaceable. Unable to provide for the normal circulation of alternative power élites at the commanding heights of society, the entire system of governance froze up.

Political democracy is incompatible with collectivized property; any attempt to maintain such an association will lead to economic ruin. The reasoning behind this argument is simple. Collective property puts control over the nation's resources into the hands of actual or potential political powerholders. They can then court political support by giving, or promising to give, the electorate the opportunity to increase its current level of welfare and standard of living by consuming available capital, productive and otherwise. The incumbent party makes it politically possible for the electorate to consume capital. The competing opposition parties will attempt to win the elections by promising an even better treat. If they win, the process of capital consumption will only be accelerated. Even if they do not win, the acceleration of this undercutting of the productive base of society may still take place: the incumbent party, aware of the danger that it could be thrown out of the saddle, will preemptively offer the electorate an even more intensive (and extensive) portion of capital. Either way, the outcome is the same: the available capacities are gradually – but not necessarily slowly – wiped out and inherited capital disappears. The gloomy outlook is the sustained impoverishment of the country and its descent into pre-civilizational stages of social development.

A corollary of this analysis is that the incumbent élite is irreplaceable. This élite has the advantage of actually allowing the society's current level of consumption significantly to surpass

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current production – measured, say, by GNP – and of calibrating the extra consumption in such a way as to eliminate any threats that might come from the competing opposition parties.

This argument predicts that it will be impossible to remove the incumbent from office. People become incapable of using whatever prerogatives they formally have for dismissing their own employer. The Federal Republic of Yugoslavia (FRY) appears to be the first country to have combined a multi-party system with inherited collective ownership. It remains to be seen what the final outcome of this arrangement will be: the process of consuming capital can continue only as long as there is any of it left to supplement consumption. It is also worth emphasizing that the destructive relationship between the economy and the polity works both ways: the quasi-democratized polity destroys the economy, and the inadequate ownership base of the economy eliminates all traces of democracy in politics. By spoiling the electorate – allowing it gradually to consume capital which belongs to all citizens – the incumbent acquires a powerful means of perpetuating his political hold on society.

The Consequences of Electoral Capture

The first, and an important, consequence of electoral capture is the lack of legitimacy of political rulers: they are both free of effective political competition and in a position to control the electorate rather than being controlled by it. If one applies Lipset's definition of legitimacy as a feature of political rule whereby citizens consciously and willingly accept political authority in exchange for order, protection and other public services,¹⁰ it is quite evident that, in the FRY, the conditions implied by the definition are not satisfied. First, the asymmetric distribution of power and political influence means that proper alternatives to the existing regime cannot develop; citizens are not offered a meaningful electoral choice. Secondly, because of the regime's totalitarian control of the media, citizens are not able to acquire accurate information, and are thus prevented from having relevant information. Their picture of society is distorted, biased and out of touch with underlying realities. As is often pointed out in Yugoslav intellectual circles, Yugoslav citizens are forced into a virtual world and are thus unable to evaluate facts realistically. Thirdly, and most importantly, Yugoslav citizens depend for their daily bread on the state and on the political party which controls it. There are various ways

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in which governmental control over jobs is used to extract political obedience. If, as an employee of a socially owned company, you are bussed several times to take part in the ruling party's rallies, it becomes somewhat difficult to vote against the party. If voters are beguiled or intimidated into voting in a particular way, then, clearly, the outcome of elections cannot be treated as legitimate.

The Milošević regime's spectacular failures (the catastrophic state of the economy, including hyperinflation; the loss of territories which the regime had claimed were part of Serbia; the country's dismal international isolation) have meant that its political support has dwindled despite the enormous advantages it enjoys over competing political parties. On various occasions the ruling party has not won enough seats to control parliament; as a consequence, its rule has been threatened. But here another deep structural failure of the political system has come to its rescue. As the biggest, richest and most powerful party, the SPS has been able to prevent the opposition parties from forming firm and stable coalitions simply by buying some of them off and absorbing them into the ruling coalition. The SPS can offer much more to a would-be coalition partner than that party could hope to get even if the opposition as a whole were victorious in an election. Politically and in other ways it is more profitable for an opposition party to enter into coalition with the incumbent party – the SPS – than to remain consistent in terms of its programme and loyal to the opposition. Since all the many opposition parties are in the same position, it is practically certain that as many as necessary (though so far just one, the SRP, has been enough) will betray its cause (as it is usually called) and join a coalition with the incumbent. These parties become the junior partner in the government and acquire ministries with little power and without large networks of regional and local offices. As a consequence, these parties make it possible for the incumbent to perpetuate its rule. The readiness of the opposition parties to enter these coalitions cannot primarily be ascribed to their low ethical standards (even though they can be reproached on this score). Rather, it should be seen as a reflection of the structural failure of the political system, a predictable consequence of the perverted motivation structure, inherent in the system, that shapes political behaviour.

The system has another structural weakness. The opposition parties do not only fight the ruling party but also compete among themselves. Engaged in the epochal task of toppling the regime, they are continually agonizing about how to distribute the spoils of

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an eventual victory. The mistrust and tension this entails becomes most intense in those – critical – times when the opportunities to topple the socialist government are at their best. The strength of the coalition, therefore, is least exactly when it needs to be greatest. Structurally, then, the system as a whole works against the opposition and in favour of the ruling parties.

Another weakness in the system – which in some respects resembles these structural failures – is the country's socialist past. Socialism in Yugoslavia was not as brutal and unpleasant as it was in the rest of the socialist commonwealth: it was relatively liberal; and abundant resources flowed from the West in various forms (credits, workers' remittances, and gifts). The standard of living was far greater than it would have been had it reflected the country's actual productive capacity. Most of the population has positive memories of socialism. The ruling party, together with at least one of its junior coalition partners, enjoys an uninterrupted continuity with the past and is thus the bearer of a socialist legacy that is perceived favourably. This creates tremendous political support for the SPS and acts as a structural advantage that delivers the ruling élite a large number of votes.

Electoral Capture and the Rule of Law

The main purpose of constitutional constraints and of major legal provisions is to limit the power of governmental organizations and of administrative decision-making agencies. *Non sub hominem, sed sub legem* – this dictum is probably the best expression of the notion that the law protects human rights and liberties from the state as an institution specialized in the application of – and authorized to use – coercion. This principle is realized only in a few countries; the FRY is one of the very few in which its opposite is put into practice. Rather than serving to constrain state power, in the FRY laws are instrumentalized for the preservation and, indeed, the expansion of state power. The deep roots of this logical and functional reversal of principles lie in the phenomenon of electoral capture. Under normal circumstances a government has to obey the law because lawbreakers are likely to be voted out of office. This mechanism does not work in Yugoslavia. The political oligarchy controls the electorate and so does not have to reckon with such sanctions.

To begin with there is a great number of laws. This appears to be a characteristic of most societies in which political might is

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overextended and the coercive state all-pervasive. In addition, laws are poorly co-ordinated and in many cases blatantly contradictory. This contradictoriness is partly the result of the sheer number of laws, partly a consequence of a lack of knowledge and, in particular, of high-level expertise on the part of law makers, and partly a product of conscious attempts to obscure and confuse the regulatory regime in order to make it easier to manipulate people and their organizations. Consequently, many laws conflict with the constitution; lower level laws frequently do not correspond with higher level laws; much of what should be regulated by law is in fact regulated by government decree and other lower level acts; laws are broken when political expedience demands; or laws are upheld when this is to the advantage of the political élite. It is impossible to obey all laws simultaneously. Respecting one law frequently makes it necessary to break another (or others). It appears to be particularly difficult to do business efficiently without, daily, breaking many laws. Legal provisions – indeed, the legal system in general, including the judiciary – become yet another component of electoral capture, powerful levers of control which make it impossible to topple the ruling party, to reform the system, and to reintegrate the country into the international community of nations. The usual (and normatively prescribed) order of things is turned upside down. An English joke has it that the regulations governing the railway system are so numerous and complex that railway employees resort to strict observance of the rules as a substitute for strikes; as a result the speed of trains is reduced to five miles per hour or thereabouts. An analogous situation prevails in the FRY, but throughout society, not just in one industry.

One consequence of the extreme complexity of, and confusion caused by, the Yugoslav legal system, is a generalized guilt: many members of the (broadly defined) social élite – those who shape the political attitudes and act as authoritative opinion makers – break laws and even commit acts which might attract serious punishment. On the other hand, laws (and punishments) are applied selectively. Those who co-operate with the authorities are spared; those who do not exhibit a sufficient degree of obedience are dealt with firmly; and those people who co-operated once but have since, for some reason, rebelled are particularly at risk. The threat of punishment is a powerful instrument for controlling people, and, indeed, for controlling those who are most influential and might count in political life. This gives the establishment a firm grip on the bulk of the social élite. This is another component of electoral capture.

*Political Democracy and the Market Economy / 25***Sliding Back to Authoritarian Rule**

The opportunity to break the rules and ignore the law is especially great in periods of social turmoil and political turbulence. In these circumstances the power of the ruling oligarchy increases most; here it has the best opportunities for exploiting the legal system as an instrument of political might. This is why the controlling political party has an interest in fomenting severe tensions and open conflicts: strengthening the government strengthens the position of those who run it. Generating threats to the normal functioning of the system thus becomes a permanent feature of society and a fact of daily life. This is when the rule of law is most obviously suppressed and legal insecurity pushed to its extreme. The Yugoslav experience suggests that electoral capture in its less malignant forms will create profound crises which eliminate much of what the rule of law represents and offers to society. The incongruous combination of collectivized property and formal multi-party democracy is unstable; the incompatibility of its component parts creates tensions, and the whole system seems to be geared towards an explosive resolution of these tensions. The last remnants of the rule of law – the traces of its form that remain long after its substance has disappeared – are among the victims of such a hazardous procedure.

Yet before the big bang takes place, partial adjustments occur. These take the form mainly of the political subsystem adjusting to the form of property ownership and to the economic subsystem, rather than the other way around. This is because it is extremely difficult to transform economic institutions. This state of affairs has been aptly labelled 'path dependence'.¹¹ Path dependence is ultimately conditioned by an inability to adopt new institutional arrangements and by a lack of interest in doing so. The inability consists mostly of ignorance about how to support new institutions and how to run the processes regulated by them. Schoenfelder points to the suggestive examples of Bulgaria, Romania and Serbia in the middle of the nineteenth century.¹² All three countries had pro-Western political élites and had adopted more or less modern legal institutions; however, they lacked the qualified cadres to run these institutions. The lack of interest in adopting a market system based on private ownership reflects the unwillingness of the current political leadership to dispense with resources.

As the political system, therefore, continues to adjust to its collectivized property base it becomes increasingly similar to a classic socialist system based on central planning, crude authoritarian rule, and the absence of the rule of law.

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The failure to transform the property base of the economy and to implement complementary economic reforms has been accompanied by the maintenance and even the strengthening of an essentially undemocratic political system. The FRY has an authoritarian political structure masked by a thin veil of formally democratic institutions. This has led to economic ruin and has distorted the political system, with the consequent elimination of the rule of law and of the meagre remnants of democracy inherited from the past. The way out of this institutional impasse is twofold: transformation of economic institutions and democratization of the polity. This, however – as the analysis above has suggested – is easier said than done.

Notes

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4. Friedrich A. Hayek, *Poredak slobode (The Constitution of Liberty)*, Novi Sad, Global Book, 1960 & 1998, pp. 69–80 and 95–100.
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6. Gordon Tullock, 'Rents and Rent-Seeking', in C. K. Rowley, R. D. Tollison and G. Tullock (eds), *The Political Economy of Rent-Seeking*, Boston, MA, Kluwer Academic Publishers, 1988, pp. 51–62.
7. Jozef M. van Brabant, 'Toward Effective Transformation', in N. P. Ostojic and N. Scott (eds), *Recent Lessons from Transition and Privatization*, Belgrade, European Center for Peace and Development, 1999, pp. 1–30.
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11. Bruno Dallago, 'Systemic Change, Privatization and Entrepreneurship', in N. P. Ostojic and N. Scott (eds), *Experiences and Results of Privatization in the Economies in Transition*, Belgrade, European Center for Peace and Development, 1998, pp. 7–10; 'Owners, Incentives and Actors in Transition and the Role of Policies', N. P. Ostojic and N. Scott (eds), *Recent Lessons from Transition and Privatization*, Belgrade, European Center for Peace and Development, 1999.

12. Bruno Schoenfelder, 'Auf dem Weg zum Besten Wirt? – Anmerkungen zur Entwicklung der Eigentumsverhältnisse in der tschechischen Industrie', manuscript, 1998; *Corporate Governance in Countries in Transition – The Lessons of Experience*, Freiberg, Technical University Bergakademie, Freiberg Working Papers no. 14, 1999, p. 2.



2

The State and the Market: Liberal Economies and the Democratic State

Margaret Blunden

Introduction

It has been aptly remarked that political scientists do not believe in the market, and economists do not believe in the state. How many miseries of our times have flowed from this *déformation professionnelle*, not least in the transition states of the former Soviet Union and East-Central Europe? Ideological disputes about the respective domains of the state and the market have convulsed much of the twentieth century. But recent research and experience suggest that the interaction between politics and economics, between the state and the market, is complex and systemic. Understanding of these systemic properties, and of the way the sequence of effects runs between the components, is crucial for effective democratic reconstruction. This is especially so in countries with a legacy of communism, where not only the market but the state – and indeed society – may have to be regenerated and reconstructed, if not reinvented. The destructiveness of communist systems to states and societies as well as to markets, like the complex interactions between them, is incompletely understood.

This chapter, which sees the state and the market as two contrasting forms of regulation in human systems, sets out to analyse the optimum relationship between them in democratic states which aspire to modern levels of prosperity. What are the preconditions for the effective operation of a market economy? What should the scope and range be of a state's regulation of the market? How important is a free market in some form to the existence and survival of civil society? To what extent do

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democratic states *ipso facto* promote prosperity? To what extent are the holding of power and the making of money kept separate in democratic states, and why are even the most messianic leaders of democratic states willing to surrender power in the aftermath of defeat at the polls? What is the optimum sequencing of changes in transition states? These theoretical issues have the most direct practical bearing on the processes of democratic reconstruction in Serbia and Montenegro and more widely in the region.

Two Forms of Regulation

The state and the market are forms of regulation: the state regulates by the conscious processes of executive action, legislation and rule or norm setting; the market by the autonomous impact of scarcity and demand on prices and supply. State regulation is the outcome of conscious human judgements and choices, by the few or the many, according to the nature of the regime. Regulation by the state may be oppressive and is endlessly open to abuse. In democratic societies, state regulation is the outcome of collective decision making in some form. Governance in democratic societies is the mechanism for making collective judgements for the common good. In a democratic society, where governments are held accountable, state regulation sets the rules and progressively defines and redefines the standards of the acceptable and the unacceptable. Regulation by the democratic state, unlike regulation by the market, involves ethical choices: this is better than that, this is acceptable, that is not.

The history of modern democratic states can, indeed, be understood as the progressive definition and redefinition over time of the standards of the acceptable. If the process of collective decision making based on ethical criteria works well, societies are stable across the generations. Their long-term stability depends on effective regulation, that is, on the maintenance of relationships in time, keeping linear changes within critical limits, in accordance with norms, standards or governing relations which are always evolving.¹

Regulation by the market, in theory, liberates governments and people from the burden of making conscious ethical choices for the common good. It legitimates the pursuit of individual self-interest. That is a large part of its appeal. Nineteenth-century economic theorists, drawing on and perhaps simplifying Adam Smith, conceived of the market as a self-regulating system, one in which

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the self-interested actions of thousands or millions of individuals automatically aggregate, as if by the working of a hidden hand, to the collective good. Classical economists, as William Keegan observes, have been obsessed with a theoretical world that is based on assumptions such as ‘perfect competition’ and an ‘extreme flexibility of wages and prices’ – which produce equilibrium.² The idea of ‘self-regulating systems’ fascinated Enlightenment thinkers, among them Karl Marx. When the Marxist goal is reached, and the state has withered away, communist societies will achieve ‘a state of automatic regulation as free from interference as the goal of Adam Smith’.³ Jeremy Bentham’s utilitarianism is another Enlightenment example of the self-regulating system, one in which the result of millions of individuals pursuing their own greatest happiness also automatically adds up to the *summum bonum*. In the utilitarian conception of politics, the bargaining and trade-off of the market place are also the currency of political life

These Enlightenment theorists were keen to minimize the influence and scope of state regulation, of political control, of what the Americans have taken to calling ‘big government’. They were gripped by the desire to reduce the role of politics, to escape from rule by kings, patricians, politicians, the high and the mighty – with all its manifold capacity for error, incompetence, self-interest, arbitrariness and abuse – to the clean, dispassionate operations of the self-regulating system. More recently, modern politicians, burdened by impossible choices between competing goods and the paralysing pressure of vested interests, have sought to shift the burden to the automatic operations of the self-regulating market. Margaret Thatcher and Ronald Reagan, with their commitment to rolling back the frontiers of state control, are among recent Western politicians to succumb to its attractions, and the whole modern movement towards global deregulation and free trade is powerfully affected by this mode of thinking.

It has, in fact, long been understood that the ideal of a totally self-regulating market system is flawed in two fundamental ways. First of all, the so-called free market is a dependent, not an independent variable; it is a highly artificial entity which relies entirely on the regulatory capacity of the host state. Capitalism has to be managed. In *The Great Transformation*, his study of the first industrial capitalist society – that of England – the economic historian Karl Polanyi recognized that the ‘free market’ was an artefact, not a natural system, entirely dependent on legislation to create and maintain the conditions for its existence. There was nothing

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natural about *laissez-faire*. An institutional fabric and state action are needed to create the conditions in which a free market can operate. The legal system must minimally define and enforce private property rights and the law of contract – providing for redress in case of breach – as well as elementary rules of fair trading and measures to preserve competition and resist the tendency of businesses to seek monopoly. If the operations of the market are allowed totally free rein, then the result is socially devastating, the impact on social cohesion catastrophic. Polanyi relates how the politically unregulated first Industrial Revolution in England produced dislocation on a scale which would have destroyed the very fabric of society, including the means of production, if a counter-movement to exercise political control, to mitigate the impact of the free market – in the form of factory acts, mines acts, housing acts, workmen’s compensation acts, and so on – had not been brought into play.⁴

This means that the modern state must fulfil the role of arbiter and regulator in economic and social matters; it must have the weight to make the general interest prevail against the many assaults which private interests will direct against it. The state must not only be strong enough to withstand criminality (no easy task when small states confront, as they increasingly do, powerful international crime syndicates); it must also protect customers, employees, and the social and the natural environments, against the potential ravages of unregulated, non-criminal private enterprise. The rights of private property and the encouragement of private enterprise must be qualified by, and subject to, overriding public interest.

The processes of globalization and the increasing impact of modern technology have each increased the demands on the regulatory functions of the state, while simultaneously weakening its capacity to fulfil that role. The international financier George Soros, himself an adroit operator in the modern world of international capitalism, has no illusions about the likely public costs of the unregulated global financial market. The belief underpinning the global capitalist system – that, left to their own devices, financial markets move towards equilibrium – is, Soros argues, a fallacy. Market discipline needs to be supplemented by another discipline: the maintenance of stability in financial markets – and this has to be the object of public policy.⁵ The international financial system is not in principle beyond control; what is absent are the mechanisms of control – the institutions – and the will to implement them.

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Uncontrolled international finance could produce disaster, political as well as economic. The 'open society', as defined by Karl Popper, may be threatened not only by closed societies based on totalitarian ideologies but also by lack of social cohesion and the absence of government.⁶

Modern technology, which has multiplied the capacity of the modern economy, has similarly magnified the destructive capacity of the uncontrolled market, of unregulated private enterprise. The enormous potential of the modern technology-based economy has amplified the demands on the state to mitigate the impact of the free market. As Geoffrey Vickers puts it, as technology steadily expands the range of the possible, converting Acts of God into acts of man, and the mechanisms of the free market multiply individual choice, then, if chaos is to be avoided, the load on the political system must increase, the requirements for political regulation must become more exacting. Expansion of market forces does not allow you to roll back the frontiers of government. The more you have of one, the more you must eventually have of the other. 'Individual choices through the market have generated a society which only political choice can regulate.'⁷ The idea that there is a fine balance between exercising power and limiting it, and between the need to encourage and to restrain individualism, has been around for a long time. What Vickers saw is that, as technology amplifies the range of individual choice, the balance must shift more in the direction of political regulation and individual restraint.

Ernest Gellner, too, was alert to the implications of modern technology for the balance between state and market regulation. The modern, technology-based economy is so powerful and so potentially destructive that an unrestrained market economy should be out of the question. 'The side-effects of economic operations, if unrestrained, would disrupt everything – the environment, the cultural heritage, human relations. They simply have to be politically restrained, though the control may be – and probably should be – camouflaged, consensual, negotiated and subtle. The economy must be free enough to provide plural institutions with their bases, but not powerful enough to destroy our world.'⁸

If the market is not and cannot be free and self-regulating, if it is itself dependent on the infrastructure and rule setting of the state, and on a pre-existing rule of law, and if it is so powerful that, left uncontrolled, it will destroy society, why does political control over it have to be 'camouflaged, consensual, negotiated and subtle'? Why is the market at once so precious and so delicate that it must

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be handled in this kid-glove fashion? We do not need to spend long on the economic benefits of free enterprise. The superior economic performance of the liberal economies of North America, Western Europe and the Pacific rim over those of the command economies of the Soviet Union and Eastern Europe has had momentous consequences: the ending of the Cold War and the transformation of the world in which we live. What calls for further explanation is the role of the market economy in the creation and survival of the democratic state.

Juan Linz and Alfred Stepan, in their magisterial comparative work, *Problems of Democratic Transition and Consolidation*, argue partly on theoretical, partly on empirical, grounds that 'there never has been and there cannot be a non-wartime consolidated democracy in a command economy'.⁹ Why are command economies incompatible with democracy, and why exactly is the free market a *sine qua non* for civil society and the democratic state? The idea that civil society is an essential element of the democratic state involves the notion of counterbalancing the power of the state by other interests, influences and sources of autonomy. Stepan and Linz argue that at least a non-trivial degree of market autonomy and diversity of ownership in the economy is necessary to produce an independent and lively civil society. If all property is in the hands of the state, and all price, labour, supply and distributional decisions are the exclusive purview of the state in control of a command economy, the relative autonomy of political society required for a consolidated democracy cannot exist. Ernest Gellner understood that, in civil societies, on the other hand, autonomous production units play a crucial role in counterbalancing the power of the state. They can only do this if political power seeking and money making are largely separate activities, if people are free to make money independently of the state, without first bothering to acquire power or to cultivate the patronage of the powerful.

*The economy is where the action is, and it is possible to indulge in economic activity without attending too much or even at all to problems of power... It is possible to prosper while simply attending to one's business ... the law protects wealth, independently of whether one has formed special alliances or groups of followers for its protection.*¹⁰

Economic decentralization is a precondition for anything resembling a civil society. This is partly because it helps to defuse the

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competition for political position: there are other routes to wealth and status. Economic decentralization also underpins that miraculous occurrence, more wonderful than walking on the water, which happens so routinely in democratic states that it is virtually invisible – the willing surrender of power. In a mature democracy like the United Kingdom, members of the defeated government accept with more or less good grace to trade their mighty, prestigious, but relatively low-paid and arduous ministerial posts for the relaxation of a seat on the opposition benches, a life peerage, a lucrative directorship in the City of London, the big publisher's advance on the memoirs, or an ego-boosting American lecture tour. Politicians are more likely to get rich out of office than in it. Political power is a strong aphrodisiac, but money has its consolations. The personal security of former prime ministers is protected by the secret service. It is not explicitly acknowledged in democratic states that the alternance which lies at the heart of the democratic system relies on the fact that loss of power does not also mean the loss of money, respectability or personal security. There is a possibility that growing legalism in the international system – the high-minded desire, embodied in the European Court of Human Rights, to mete out retribution – may complicate the processes of peaceful democratic consolidation.

The separation of power and wealth creation in democratic states has economic as well as political benefits. The democratic state does not have to follow the practice of some traditional societies of controlling or destroying the generators of wealth because these people do not seek power. It was said of the late King Hassan II of Morocco that his control over who was and who was not allowed to become rich was an essential component of his rule. That is characteristic of the type of regime which Linz and Stepan classify as sultanic, and the price of such regimes is both economic and political: there is neither a prosperous economy nor a civil society.

It is worth noticing in passing that there are differences of view about just how important the liberal economy is to civil society; these are, perhaps, differences of emphasis more than anything else. John Keane, for instance, apparently does not attach much importance to the role of the private sector in counterbalancing the power of the state. It is voluntary organizations, rather than capitalist entrepreneurs, large and small, that are the heroes of his civil society. And he is critical of what he considers the unduly 'economic' flavour of Gellner's concept of civil society. But Keane does

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concede that, where there are no markets, civil societies find it impossible to survive.¹¹ It is problematic that Keane recognizes Japanese capitalism as a form of capitalism without civil society since he also asserts that without civil society there can be no markets.

It is now well established that a market economy, constrained by a legal and political infrastructure, is good for civil society and democracy. Is democracy, for its part, good for economic prosperity?

Sequences of Democratic Transition and Consolidation

If the democratic state and its attendant civil society, on the one hand, and the liberal economy in some constrained form, on the other, are essentially interdependent, what does this say about the sequence of events which is necessary for societies in transition? What does it say particularly for societies making that most difficult of transitions, from the autocratic state and the command economy to the democratic state and the liberal economy?

Experience suggests that it is not possible to construct democracy below a certain level of economic strength. It is now an open question whether Serbia and Montenegro fall below that threshold, nearing the bottom as they do in the European economic league table. This would suggest that the most necessary first stage of any process of democratization would be an injection of Western economic aid, precisely the kind of assistance from which Serbia was specifically excluded during the Milošević period. Normalization, in this perspective, might be the best stimulant to change.

However, even spectacular injections of economic aid are not sufficient in themselves, as is clear from the case of Russia – the largest state in the world – in the early 1990s. The Chicago School of economists, so influential as consultants in Russia in the early 1990s as well as over the Western governments of Margaret Thatcher and Ronald Reagan, saw the market as an essentially independent variable, as itself the essential precondition of the democratic state. Create the market, and democracy will automatically follow. Free up the market, privatize, deregulate, liberalize all aspects of economic life, and everything else, democracy as well as prosperity, will be rendered unto you. Not only does the hidden hand of the market automatically aggregate the millions of individual choices to produce collective welfare, but the free market itself spawns the democratic society and the democratic state. This was

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recognized even at the time as a cruel delusion. Jacques Attali, the French director of the European Bank for Reconstruction and Development, asked in 1992, 'Do we want to build a market economy or an economy dominated by the mafia? It is ill-advised to free market forces in the short term without first having put in place the necessary institutions. Without such institutions, there is a black market, not a market in the proper sense.'¹² As John Gray has remarked, it was particularly unfortunate that the collapse of the Soviet Union occurred at a time when economic policy in the West was animated by a species of free market fundamentalism.¹³

Since the crass strategic mistakes in Russia in the early 1990s, it is apparent – too late for that gargantua of a state – that the successful liberalization of a command economy depends on there being a pre-existent legal and institutional infrastructure. In order to have an effectively operating market, you must have an effectively operating state, able to fulfil its core functions of maintaining law and order, collecting taxes, and keeping corruption and criminality within bounds. In other words, good governance must precede free markets in the sequence of transition. It is noticeable that Western sponsors, public and private, who in the early 1990s were pouring their funds into East-Central Europe and the former Soviet Union for the encouragement of business and the private sector, are now giving prominence to programmes on 'good governance'. It has been a lesson which was dearly bought in Russia, with still incalculable consequences.

We know less about another probable precondition of successful capitalism, that is, the shared societal values necessary for the high levels of trust which its operations involve. How far are the effective operations of the market dependent, not just on the state regulatory infrastructure, but on the widespread distribution throughout society of particular social values and social cohesion? How far does economic capitalism draw on pre-existing social capital? The historical association in the West between the growth of capitalism and Protestant Christian values has, of course, been thoroughly explored, notably in Weber's *The Protestant Ethic and the Spirit of Capitalism* and in R. H. Tawney's *Religion and the Rise of Capitalism*. But the growth of successful capitalism in Japan and elsewhere in the Far East has demonstrated that Protestantism is only one of the possible sources of 'social capital'. This growth has, at the same time, reinforced the point that particular kinds of socially constructed discipline, shared social values and social solidarity, socialized children in stable families, are likely to be

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necessary for the successful operation of the market. Some kinds of communist regimes may have been particularly destructive of this kind of social capital. Indeed, some advanced forms of capitalism, as in the United States and some parts of Western Europe, have proved equally destructive of social capital. How best to construct, maintain or reconstruct social capital under modern conditions is one of the most taxing questions of our time.

Linz and Stepan, who give an outstanding analysis of the optimum transition sequence to democracy, pay relatively little attention to questions of social capital. Their comparative study of democratic transitions in Southern Europe, South America and post-communist Europe does, however, provide irrefutable evidence that market economies cannot come into being, nor be maintained, without a degree of state regulation. Markets require corporation laws, the regulation of stock markets, regulated and enforced standards of weights, measures and ingredients, and the protection of property, both public and private. Markets are, as Polanyi recognized many years ago, artificial rather than natural. Linz and Stepan argue persuasively that the first priority for a transition state must be to create democratic regulatory state power.¹⁴ This democratic regulatory state must create that set of norms, regulations, policies and institutions which Stepan and Linz call 'the economic society', that is, the legal and regulatory framework which is produced by political society, respected by civil society, and enforced by the state apparatus.

Linz and Stepan see a grave danger in what they call 'inverting the pyramid' – what activists and analysts do who believe that the market will legitimize democracy. They argue that the history of successful democratization indicates that the reverse normally occurs: democracy legitimizes the market. The issue for modern democracies is not the creation of the market, but the creation of the 'economic society', that coherent regulatory environment and rule of law necessary to transform command economies into economic societies. Consequently, the priority must be to create regulatory democratic state power. The sequence of events which they analyse in notable democratic transitions in Latin America is, they argue, beginning to be replicated elsewhere, based on the growing recognition that effective privatization is best done by relatively strong states which are able to implement a coherent policy. Economic liberalization means that the state withdraws the range of its control over large swathes of economic activity, but must simultaneously increase its capacity for effective regulation of

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the emerging private sector. The essence of the rich body of research on privatization and state restructuring shows that effective privatization entails less state scope but more state capacity.¹⁵

Conclusion

Ideological conflict about the relative domains of states and markets has ravaged much of the twentieth century. There is something about this area which breeds extremism. Nothing could be more inappropriate and more damaging than oversimplified ideologies in this area where, it now appears, a complex system, a delicate balance of essential, intricately linked components, is operative, like some fragile natural ecosystem into which we blunder at our peril. For a modern, democratic, prosperous state, there has to be held in delicate balance the rule of law and the freedom of civil society; democratic constitutions and the restraint of corruption and criminality; public and private; incentives for entrepreneurs and 'sufficient' freedom of the economy and private enterprise but also the sustenance of social values and cohesion. Although these elements are interconnected, the sequence in which they are put in place in transition societies is crucial. Once the transition is accomplished, there is need for perpetual watchfulness so that capitalism, which in its unfettered form is a kind of permanent revolution, does not over time destroy the social capital which allows capitalism to come into existence in the first place. All of which suggests that current Western policies, which rightly see the promotion of democracy and good governance abroad as being in their own national interests, are in need of some strategic rethinking, not least in respect to Yugoslavia.

Notes

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2. William Keegan, *The Spectre of Capitalism: The Future of the World Economy after the Fall of Communism*, London, Vintage, 1993, p. 14.
3. Vickers, op. cit.
4. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of our Time*, Boston, MA, Beacon Press, 1957.
5. George Soros, *The Crisis of Global Capitalism*, London, Little, Brown and Company, 1998, p. xvi.
6. *Ibid.*, p. x.

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7. Open Systems Group, *The Vickers Papers*, London, Harper and Row, 1984, p. 60.
8. Ernest Gellner, *Conditions of Liberty: Civil Society and its Rivals*, Harmondsworth, Penguin, 1996, p. 170.
9. Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Baltimore, MD and London, Johns Hopkins University Press, 1996, p. 11.
10. Gellner, op. cit., p. 75.
11. John Keane, *Civil Society: Old Images, New Visions*, Cambridge, Polity Press, 1998, p. 19.
12. Quoted in Keegan, op. cit., p. 124.
13. John Gray, *Enlightenment's Wake: Politics and Culture at the End of the Modern Era*, London, Routledge, 1995.
14. Linz and Stepan, op. cit., p. 435.
15. Ibid.

3

A Suppressed Civil Society

Vukašin Pavlović

The Concept of Civil Society: Theoretical and Normative Dimensions

Civil society is not a concept which one can say exists either in developed form or not at all. There are societies and periods in which authoritarian tendencies and pressures are such that only traces of civil society survive; and others in which, perhaps, the first signs of an emerging civil society are evident. Serbia today belongs to the latter type of society.

The concept of civil society has both a theoretical and analytical aspect, and a normative and mobilizing role. In the first sense, the term 'civil society' is employed as a theoretical category for analysing and explaining those dimensions of social life based on a specific set of social values, and with which the following actors above all are associated: citizens with their civil rights; civil (non-political and non-governmental) organizations, associations, social movements and civil institutions; and, finally, everything in modern societies that is encompassed by the term 'the public'.

In the second sense the concept of civil society is primarily a normative idea, one which motivates citizens and other social actors to carry out different kinds of civil activities. The concept has this function most obviously in periods of transition from more or less authoritarian to more or less democratic societies and political orders.¹ As one would expect, the underdevelopment of civil society in contemporary Serbia makes the concept less usable in its theoretical and analytical sense, while enhancing the significance of its normative and mobilizing function.

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For several centuries, the concept of civil society, in both its theoretical and normative senses, has played a strategically significant role – above all in European and Anglo-American societies and mental universes. This, however, is not true of Serbia, as well as of some other Balkan and East European countries. Here, civil society, in both its theoretical and its practical senses, has traditionally had an insignificant, marginal role. Serbia belongs to that class of countries in which the state has been more important than society. The view that a strong state is indispensable seems to have deep roots in Serbia; the belief that only rulers deserve respect seems to be widespread. In Serbian history, rule by a strong state has, unfortunately, often meant arbitrary rule. The political culture of this region has been characterized by the cult of the arrogant, rude government, and by the rule of a strong and basically irresponsible state. A concomitant of this is that, traditionally, in Serbia society has been weak, even powerless, and insufficiently autonomous, so that citizens have often been left at the mercy of the state and of the holders of the political power.

George Schöpflin, analysing culture and identity in the post-communist countries of South Eastern Europe, observes correctly that the Balkans are ‘marked by the dominance of collectivism over individualism and of the state over subjects. The society has been weak and dependent, and this dependence has been reinforced by the historical experience these countries have had’.²

The Three Roots of Civil Society

The formation of modern European states and societies went hand in hand with the emergence of the first oases and relatively autonomous forms of social life. The concepts and practical models of civil society may be said to have relied on ideas, inspirations and experiences stemming from three different historical traditions in European political culture.

One of these was the Euro-Mediterranean tradition. The first embryos of civil society appeared in the Italian city-states in the Renaissance. This tradition is best exemplified by Machiavelli’s *Discourses*. Writing about the virtue of ruling, Machiavelli stresses republican virtue and its role in making possible a happy political life; this essentially matches the interests of the growing bourgeoisie. Machiavelli emphasizes three important values of civil society (and of civil life in general): peace and the safety of citizens; enjoying one’s possessions and wealth; and the right of everybody to have and defend their opinion.³

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The second historical root of civil society was the continental European tradition, which developed under the dominant influence of Germanic culture in the Central and Northern European region. Here, the transformation of subservient subjects into free citizens was considerably stimulated by the experience of the guilds, the first associative form of self-protection for artisans and merchants.⁴ The Reformation gave momentum to the growth of the guilds and to the articulation of the peculiar ethos of the guild cities in Germany, Flanders, and elsewhere. (The modern equivalents of the guilds are corporations and labour unions, in which particular interests and public-spiritedness are combined.) The guild system accelerated the development of the market, of exchange, and of the mercantile capitalism in general, encouraged the recognition of the value of human work, contributed significantly to the development of professional ethics. In addition, it made possible the increased influence on decision making in city administrations of the productive, merchant segment of the population. Kant, Fichte, and Hegel were among the thinkers who articulated the theoretical distinction between the state and civil society in the Germanic cultural region.

The third, and most important, historical root of the emergence of civil society is the liberal Anglo-American tradition. The foundations of this tradition were laid by John Locke, with his idea of the constitutional state based on property and of liberty guaranteed by the rule of law. The Scottish moral philosophers Ferguson and Smith stressed the modernizing and self-regulating components of civil society. More radically, Thomas Paine raised the issue of restraining state power in order to benefit civil society. His concept of the minimum state assumes an autonomous civil society and a limited role for the state, which he viewed as a necessary evil. The great French thinker de Tocqueville, with his brilliant analysis of democracy in America, is also important if one wants to understand and discuss theoretically the Anglo-American civil tradition. But the liberal-democratic model of the relationship between state and civil society was completed only when the foundations of classical liberal theory were laid: here John Stuart Mill is undoubtedly the key figure.

In the period between the mid-eighteenth and the mid-nineteenth centuries (when, as Keane rightly asserts, the concept of civil society became established as the key paradigm of European political thought),⁵ of these three cultural and historical influences, two, the Anglo-American and the Germanic, were still at work.

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With the rise of large European nation-states, the ideas of civil society in the fragmented Euro-Mediterranean area seem to have fallen into oblivion. France is a partial exception, but even there – in spite of the fact that France provided two great thinkers on civil liberty: Rousseau and Montesquieu – the Jacobin tradition meant that the view of the indispensability of the strong state would prevail.

From the beginning of the nineteenth century, one can distinguish two antithetical intellectual approaches to the relationship between civil society and state. One approach, based on the Germanic cultural tradition, reaches its peak with Hegel and Marx. Hegel tries to reconcile liberalism and the idea of the omnipotent, universal state. He proposes that civil society can embody merely the non-rational (*unvernünftige*) ‘General’, while only the state (as the reincarnation of the Absolute Spirit and the universal political community) can embody the general interest in a rational or true way. However, because of his own dialectical method, Hegel cannot forget the liberal postulate about the particular interest: ‘It is true that the ultimate purpose of the state is the general purpose, but the substance of this general interest is in sustaining particular interests.’ Hegel developed the dichotomous paradigm of the relationship between civil society and the state to its theoretical endpoint; from then it became one of the leading concepts in political philosophy and political sociology.

Marx’s critique of Hegel’s conception of the relation between civil society and the state confused rather than clarified the problem. First – and contrary to his own methodological position that contradictions cannot be solved by being abolished – Marx asserted that the solution to the problem lay in the abolition of the difference between civil society and the state; this would be effected by ‘socializing’ the state and politics. This unclear theoretical position on the ‘social state’ would have disastrous consequences for the socialist movement and for practical attempts to create socialism. It made possible the equation of the state with society; as a result, the state, in circumstances in which civil society had been abolished, could present itself as the only representative and interpreter of society. Society, in other words, was completely overlaid by the state: the result was not a model of the socialized state model, but of the ‘etatized’ society.

Another confusion in Marx’s work refers to the concept of civil society itself: Marx, namely, equated bourgeois and civil society; in so doing he narrowed the meaning of the latter. Even though it is

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true that bourgeois society may be subsumed under the concept of civil society, the reverse does not hold: not all forms of civil society are necessarily forms of bourgeois society. Even in the first half of this asymmetrical relation some important deviations would appear that Marx could not have dreamed of – fascism, for instance.

The second dominant approach in the development of the concept of civil society stems from the Anglo-American liberal tradition. This focuses on the self-regulating function of civil society, on civil society as the important treasury of individual human rights and liberties, on civil society as the ultimate defence against the invasion of the state. This line of thinking sees the free and independent personality as the central actor in civil society; and the guaranteed rights of, and the respect for the personality of, the citizen as the key to the civil idea. Lorenz von Stein, who belonged by birth to the Germanic circle,⁶ asserted that the nature of a nation's life is determined by a permanent struggle between the state and the society, and that the principle of the state is directly opposed to the principle of society.

We can summarize, in an extremely pointed form, the comparison between these two antithetical approaches to the relation between civil society and the state as follows.

One approach, relying on the traditions of Germanic political culture, is characterized by the emphasis placed on the political sphere, the apotheosis of the state, by the stress on the importance of institutional order, and by its collectivist orientation. On the whole this current emphasizes finding political solutions to social issues. The second approach, representing the liberal tradition of Anglo-American political culture, is characterized by the priority given to the social sphere, the apotheosis of rights and liberties, by the emphasis on association and self-organization, and by its individualist value orientation. In other words, this current favours finding social solutions to social problems.

Serbia: The Civic Deficit

For a variety of historical and contemporary reasons, Serbia is characterized by a serious civic deficit.

Serbia was isolated from the three traditions in early and classical European political and democratic culture. The democratic republicanism of the Renaissance had no influence on Serbia. The same was true of the Reformation, its guild system and mercantilism, as well as of the Enlightenment and the Protestant ethic. The

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ideas of classical liberalism had little influence, and then only in certain periods in Serbia's history. Liberal ideas, like early socialist ideas, were brought to recently liberated Serbia in the middle of the nineteenth century by young people educated at European universities. The liberal movement, partly supported by the emerging bourgeoisie, offered its national and foreign policy programme through Garašanin's *Nacertania* (1844). Supported by powerful figures in the State Council, the liberal movement even succeeded, at the Saint Andrew Assembly in 1858, in replacing the reigning dynasty. But then, having confronted absolutist power and the police-clerical state, the liberals moved the centre of their activities to Vojvodina, the part of Serbia then ruled by Austria-Hungary.

The Serbian bourgeoisie in Vojvodina provided a favourable context for the development of liberal ideas. In the 1860s these ideas were prevalent among young people. High school students, in particular, were susceptible to liberal ideas, and actively disseminated them through student associations and papers. The first Assembly of the United Serbian Youth, held in Novi Sad in 1868, expressed the aspirations of the liberal movement.

Although the liberals had left Serbia, liberal ideas remained; this is shown by, among other things, the fact that the general franchise was introduced in Serbia as early as 1869 (several years before Germany or France).⁷ An important stimulus in this regard was the translation – and the publication in Serbia – of significant works by European thinkers. Thus (in addition to Montesquieu) J. S. Mill's *On Liberty* was published as early as 1868. (It is interesting to note that the translator was Petar Karadjordjević, who would become king in 1903. His reign, above all in the period 1903–14 (that is, up to the beginning of World War I), would be remembered as the golden age of liberal democracy in Serbia.)

However, the most serious weakness of the liberal movement in nineteenth-century Serbia lay in its national romanticism (which reflected the fact that large sections of the Serbian people were not yet liberated). Svetozar Marković, who early on brought socialist ideas to Serbia, criticized the national romanticism of the Serbian liberal movement.

The processes of modernization and of the development of civil society, which began between the two world wars, were, for many reasons, slow; they remained incomplete. Within the first, interwar, Yugoslavia, Serbia was a typical 'dual' society: there was a sharp difference between urban and rural patterns of life (with Belgrade particularly standing out); and the Serbian élite was torn

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between Europeanization on one side and traditional values on the other.⁸

On the whole, the dilemma of whether the state or society should be given priority seems not to have existed in Serbia's political culture and tradition. A political culture that seeks solutions to all problems exclusively in the actions of a strong state has traditionally been dominant in Serbia. The main question to be asked today is, can this be changed, or, what happens when the state fails?

To these historical or traditional causes of Serbia's civic deficit one must add contemporary constraints on the possibility of establishing civil society in Serbia. These include the following:

- the experience of the immediate past, when 'real socialism' stifled civil society;
- the negative impact of the disintegration of former Yugoslavia, above all the devastating effects on civil life of nationalism, the ethnification of politics, and war;
- the mass pauperization of the population, and particularly of those social strata (the middle class, the urban population, the younger generation) which are the most interested in the development of civil society;
- the erosion of the material basis of important preconditions of civil society: culture, education, arts, and spiritual life in general;
- the cumulative effects of nationalist policy, war, and pauperization: these have produced a 'society in destruction and decay',⁹ which is obviously not a favourable framework for the development of civil society; and
- the isolation of Serbia by the international community; which has not only generated a kind of 'ghetto society' but also has almost completely cancelled out the positive influence of international civil society on sources of a possible internal democratization.

Some of these causes of the civic deficit in Serbia, or of the suppression of civil society – primarily those under the first two points – are elaborated later in this paper.

These historical and contemporary causes of the absence of civil society, or of the serious civic deficit in Serbia, explain why in Serbia there is only a suppressed civil society, a civil society in deep shadow.

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Socialism and Civil Society: Former Yugoslavia and Slovenia

The relation between civil society and the state is, in theory and practice, inherently asymmetrical and unstable: the question of which should have the advantage, state or society, remains open.

Socialism unbalanced this sensitive relationship by using a double-edged sword: on the one hand, it suppressed, or reduced to a minimum, various forms of civil society; and, on the other, it greatly strengthened the state. Instead of socialism as a *social* project there was socialism as a *state and ideological* project.

The discussion about civil society in socialism, which began in the early 1980s, indicated not only that those involved in the discussion were searching for an alternative to authoritarian socialism¹⁰ but also, clearly for the first time, that this socialism had reached a dead end.

Of course, long before the discussions on civil society in socialism took off, it had become evident that the opportunities for socialism to evolve were extremely limited. 'Real socialism' proved to be exceptionally resistant to change: none of the many systemic reforms produced any significant change. Socialism simply could not undergo far-reaching economic modernization and political transformation without being jeopardized. Following the defeat of leftist students and youth movements in the late 1960s, it was evident by the early 1970s that socialism could no longer innovate. The fall of the Berlin Wall in 1989 and everything that happened to the socialist world at the turn of that decade – the events that have been called, perhaps too optimistically, a 'pluralist revolution' – confirm this insight.

With hindsight, 'real socialism' can be seen as a more or less successful attempt to make as fast as possible a transition from an agricultural and rural society to an industrial and urban society. This experience, historically speaking, lasted a very short time, in both absolute and relative terms. By contrast, the distinction between civil society and the state has marked the whole modern epoch and is one of the formative principles of contemporary societies.

The topic of civil society – so significant for societies in transition (both in the period before the breakdown and implosion of socialism, as well as in the phase of pluralist change) – coincided with the revival of an interest in the discourse of civil society in Western democracies (though discussions about civil society emerged simultaneously in East and West for somewhat different reasons).

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The American political theorists Jean Cohen and Andrew Arato explain that, when this debate revived in the West, it had three sources: first, it was a continuation of the old debate within democratic theory between the advocates of élitist and participatory models of democracy; second, it was an expression of the conflict of socio-political values – characteristic above all of the Anglo-American world – between ‘right-wing liberalism’ and ‘left-wing communitarianism’; and, third, it was part of the debate between neo-conservative advocates of the free market and the defenders of the welfare state.¹¹

In addition to these theoretical stimuli, the discussions about the relations between the state and civil society were also fostered by developments in the ‘life-world’ of advanced industrial and post-industrialist societies. In the 1970s and the 1980s, in the West, alternative social movements emerged to defend civil society against the expansionist thrust of the modern state. A further important stimulus was provided by the theoretical critiques of the ‘tired and overburdened welfare state’ that came both from the right (neo-conservatism and neo-liberalism) and from the left (post-Marxism).¹²

There were two sources of the revival of interest in civil society in the East. One was the growing discontent of workers, which produced a series of strikes as well as autonomous workers’ and labour union movements, culminating in the ‘Solidarity’ movement in Poland. The second source was the embryonic new social movements, most often related to a wide range of dissident and other protest movements and to demands for the radical democratization of the society. The common denominator was the permanent – sometimes quiet, sometimes loud – rebellion of society against the state.

Both the old and new debates about civil society, in West and East, point to the problem of interconnecting community life (solidarity, associativity) with individualism (rights and liberties of every citizen). Regardless of different political traditions, the concepts and practice of civil society extend beyond the sphere of the state and politics in the narrow and classical sense of the term.

Although former Yugoslavia lay somewhere between East and West, in its essential features it belonged to the group of East European ‘real-socialist’ countries.¹³ Compared to the latter societies, Yugoslavia had a few positive features (above all, a greater openness to the West and the world in general, as well as its pioneering reforms, which aimed to emphasize self-management

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and market principles). But what applied to socialism in general also applied to socialist Yugoslavia: all of its numerous reforms were doomed to fail. And in the period in which rapid transition towards political pluralism took place, some of Yugoslavia's comparative advantages in the previous, real-socialist, period underwent a paradoxical metamorphosis and became serious handicaps. At that point all the missed opportunities for a genuine and comprehensive democratization of society seem to have resulted in a boomerang effect, with negative consequences for the country's capacity to effect social change. On the other hand, all the advantages Yugoslavia had enjoyed in comparison with other socialist societies seemed to have weakened society's ability to effect radical change: in just a couple of months Yugoslavia was at the bottom of the table of the countries in transition.

Interestingly, the subject of civil society was directly involved in the sad and catastrophic breakdown of this country. A circle of young intellectuals in Ljubljana (Slovenia) – Tomaž Mastnak, Frane Adam, Gregor Tomc, Darka Podmenik and others (who were collaborating closely with John Keane) – contributed significantly to the theoretical development of the concept of civil society, both in Slovenia and elsewhere in former Yugoslavia. The publication of a collection of papers in 1985 entitled *Socialistična civilna družba? (A Socialist Civil Society?)* aroused lively debates and stimulated controversy, above all in Ljubljana, Belgrade and Zagreb, the leading centres of intellectual and theoretical life. These debates produced three models of civil society:

- 1 civil society as social opposition established by new or alternative social movements;
- 2 civil society as a self-managed society; and
- 3 civil society as a theory of modernization.

After 1987 a fourth model came to the fore and finally proved triumphant:

- 4 civil society as a form of national emancipation.

The first model was presented at the Nova Gorica round table in 1986 by T. Mastnak, V. Pavlović and M. Gregorić, and was put into practice by the new social movements (ecological, neo-feminist, peace, spiritual, and so on) which were co-ordinated by the youth organization (Ingrid Bakše).

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The second model was advanced by Adolf Bibič, professor in the Faculty of Political Sciences in Ljubljana, and put into practice by the League of Communists of Slovenia, which was already then pursuing reforms.

The third model was promoted by Frane Adam, who argued that practical support for this concept was inherent in the very process of modernization and everything it entailed (liberation of the economy from the state, development of political pluralism and the rule of law, respect for civil rights, and the establishment of a 'political public').

Gradually, the fourth model gained increasingly wide support amongst Slovenian intellectuals associated with the journal *Nova Revia*.

In addition to these theoretical stimuli, the most important sources of the revival of civil society came from the new social movements; these were, for various reasons, most developed in Slovenia. Many of the civil and democratic ideas that came out of Slovenia in the early and mid-1980s – promoted attractively and provocatively by the widely read youth journal *Mladina* – met with revulsion in the rest of Yugoslavia. The demand to abolish 'Tito's baton' not only had a specific, and a profoundly symbolic, meaning; it was also the first step in the process later labelled the 'de-Titoization' of the political and public spheres. Demands regarding the army – that conscientious objection be recognized and that civilian service be offered as an alternative to military service – were the first big challenges to the previously sacrosanct military complex. Demands to introduce multi-party political pluralism directly questioned the existing political order based on one-party rule.

All these demands had far-reaching political consequences. Since political and social forces in the other Yugoslav republics were not ready to accept the three basic demands of Slovene champions of civil society – political pluralism, the rule of law, and an independent public sphere – the Slovenian civil society project became increasingly isolated; gradually, the idea of realizing this project in terms of the Slovenian nation and state came to the fore. This development was a great loss for both sides, but much more so for the rest of Yugoslavia. In Slovenia, a self-sufficient – even a somewhat resigned – attitude seems to have prevailed: if other parts of Yugoslavia are not ready to accept these democratic changes then Slovenes have no choice but to go it alone. Of course, the conduct of the other Yugoslav republics only partly explains why

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the Slovenian concept of civil society developed into a project of establishing a self-sufficient nation-state. In other republics – Croatia, Serbia, Montenegro, and Macedonia – the project of establishing a nation-state became dominant in milieux where the concept of civil society was not an issue. (The case of Bosnia-Herzegovina is more complex, since two alternative models have clashed there: Bosnia-Herzegovina as a unified multi-ethnic state, or the division of Bosnia-Herzegovina along ethnic and confessional lines.)

As the political struggles intensified and the first multi-party elections were nearing, the fourth option – civil society as a form of national emancipation – prevailed in Slovenia, both theoretically and in practice. At the first pluralist elections, it was promoted by the Demos political coalition. Undoubtedly, Demos – which won the elections – did the most to produce this outcome. Demos, like the Hungarian Democratic Forum, took a hybrid and internally contradictory position: on the one hand it advocated liberal ideas of the free market; on the other, the preservation of national selfhood through national homogenization (at the price of national isolation, at least in relation to the rest of Yugoslavia).

Tomaz Mastnak has described well what happens when the national concept of civil society comes to power. In 'Civil Society in Slovenia: From Opposition to Power' he warns that 'civil society in power may mean unlimited power'.¹⁴ In Mastnak's words, Demos reinstated the principle of the old regime: 'Who is not with us is against us.' To this it added a new slogan: 'Who is against us, is against the nation.' Since the new government did not espouse the idea of self-restraint, the distinction between civil society and the state disappeared once more. The blurring of this distinction threatened all the achievements of the oppositional democratic struggles from the late 1970s and the 1980s. 'Civil society fell prey to its own success.'¹⁵

In Serbia in the 1980s there were fewer debates about civil society than in Slovenia; they were also less intense and involved fewer people. In addition, they had a somewhat different thematic focus: for example, the debates at Tara in 1973 and at the Centre for Philosophy and Social Theory in 1982 (which resonated louder in society) addressed the relation between liberalism and socialism. In 1986 and 1987, debates on civil society were held in Belgrade, but, again, within a broader framework of discussions about the relationship between society and the state under socialism. (These debates were, in part, published in two independent Belgrade

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cultural reviews (*Književne novine* and *Književna rec* [*Literary Review* and *Literary Word*]). Finally, there was the discussion at the 'Marx and the Contemporary World' conference in 1987 entitled 'The State and Society Today'.

Unlike in Slovenia, these were predominantly theoretical debates amongst intellectuals; they were not underpinned by energetic new social movements. Significant ecological initiatives did emerge in this period: the broad and successful resistance in 1984 to the construction by the republican governments of Serbia, Montenegro and Bosnia-Herzegovina of a system of hydro-electric power plants in the Tara river canyon; and the activity of the hard core of the anti-nuclear movement in 1985–86, which made the federal parliament proclaim a moratorium on the federal government's proposal to build four nuclear power plants. Nevertheless, civic ideas were mainly debated in the public panel discussions about 'live' theoretical and social issues held at the intellectuals' principal meeting places, such as the Student Cultural Centre, and the Writers' Club at 7 Francuska Street.

A further difference between Slovenia and Serbia is perhaps the most important one – though this was to become clear only at the turn of the decade. In Slovenia, the winning formula was 'nationalism plus civil society'; in Serbia it was 'nationalism without civil society'. After the first multi-party elections in 1990, another of Serbia's peculiarities was confirmed, one which set it apart from other ex-communist countries: while in other East European countries nationalism was a means of overthrowing the old order, in Serbia the opposite was true. The ruling political party pursued from early on a nationalist agenda, with which it intended to keep power and preserve the continuity of the old order. Nationalist political formulas, in both their old and new ideological disguise, proved to have an unbeatable advantage at the elections.¹⁶

The Ethnification of the Political Sphere

When examining the possibilities for the reconstitution of civil society in Serbia we inevitably face the question: is such a reconstitution possible at all in a framework of extremely nationally centred politics and in the context of the disintegration of the Socialist Federative Republic of Yugoslavia (SFRY) through war caused by ethno-nationalism? The question is all the more difficult to answer since authoritarianism is the natural ally and the most frequently expressed form of any radical national policy.

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Claus Offe has argued that, in any 'given situation in which individual and collective actors in post-communist Eastern Europe find themselves, ethnification must appear to be a rational strategy'.¹⁷ This 'ethnification thesis' rejects what was commonly accepted only twenty-five years ago: that the era of nationalism is over, and that the era of multi-national and multicultural societies has begun. More recently Eric Hobsbawm has written that 'nationalism is simply no longer the historical force it used to be in the period between the French Revolution and the end of imperialist colonization'.¹⁸ He asserts that nationalism is irrelevant at the end of the twentieth century: it offers no long-term solutions, even in states that are being formed on the basis of ethnic criteria.

Of course, there are big differences among the various forms of nationalism: for example, eighteenth-century liberal nationalism, the revolutionary nationalism of the beginning of the twentieth century, emancipatory nationalism in the former colonies of the Third World in the middle of the twentieth century, and the new, often retrograde and, in Hobsbawm's words, separatist nationalism characteristic of the post-communist period.

However, if we accept the thesis of the 'ethnification of politics', we must ask if there are some deeper causes of the new rise of nationalism, a phenomenon that is certainly most visible in post-communist countries but which is also evident in many Western democratic countries.

The 'ethnification of politics' refers to a two-fold shift in the role of politics: first, a shift away from being a means of regulating relations between, above all, citizens as individuals and the state towards being a means of regulating, above all, relations between ethnic groups (within or outside the state); and, second, a shift from distinguishing among individuals and groups in terms of political orientation and attitudes towards distinguishing among them in pre-political, ethnic, terms (in other words, the classical political categories of centre, left and right become less important than divisions based on the ethnic criterion).

Offe derived his formula of the ethnification of politics from an earlier, three-step, theoretical model of his, in which he offered an interpretation of the problems encountered by democratic theory and practice in relation to the societies in transition in East-Central Europe. This model seems to explain the complexity and challenges of transition in post-communist societies.¹⁹

According to Offe, each 'operative political system' is the outcome of decision making at three hierarchically distinct levels.

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On the first, fundamental, level we make decisions about our identity: for example, who 'we' are and where the social, cultural and territorial borders that separate us from others lie. In the tradition of early modern European philosophers, Offe sees passions, courage and patriotism at work on this level. This level is associated with nationhood.

On the second level, the key constitutional decisions are made, or decisions about rights, procedures and rules, as well as decisions about institutions of political life. In the tradition of early political philosophy, Offe associates this level with reason and rationality.

Only on the third, and highest, level does what is usually called normal political decision making take place: the process of transforming particular interests into political decisions (after Lasswell's famous formula that the essence of policy making is deciding who gets what, when, and how). This level corresponds to the categories of interests and power.

Offe is right to argue that post-communist societies in transition have had to make decisions on all three levels simultaneously and quickly. He correctly points out that in the countries of the West the construction of political life on these three levels took place in phases: first, nation-states were formed; then capitalism developed; and only in the end did more complex models of democracy emerge.

When this model is applied to former Yugoslavia and Serbia we see that, in this region, priority has been given to the first level of decision making, the level on which decisions are made about identity. In this respect, Serbia differs from other societies in the region in various ways. The ruling political party in Serbia (the Socialist Party of Serbia, or SPS), with the help of its political machine, conflated the three levels of decision making. The second level (constitutional decision making) and the third level (normal political decision making based on interests) were overshadowed by the first (on which issues of nationhood dominate). In this way, the party skirted (or, more accurately, postponed) making second-level decisions; that is, it (temporarily) avoided the large – and essential – task of laying the constitutional groundwork. (It changed and tailored the constitution to meet its own needs before the multi-party elections.) The political opposition – confused and weak – contributed to this situation: at first it accepted the rules of the game (the constitution and the electoral laws); only afterwards, once it had suffered electoral defeat, did it demand a constitutional assembly and 'round table' constitutional negotiations. In acting this way,

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the opposition demonstrated that it knew nothing about either turning points in politics in particular, or about the importance of political timing in general: the moment of transition to a multi-party political system – the short period when Serbia's political future was relatively uncertain – was the right time to create a new constitutional agenda; once the moment had passed (because the opposition missed it or was not powerful enough to take advantage of it), the task of creating such an agenda proved nearly impossible.

The third level, that of 'normal' politics, on which decisions are made about the allocation of values, and through them of political power, is furthest removed from the level on which decisions about identity are made. Nevertheless, in the short period of multi-party parliamentary politics in Serbia this level, too, was often instrumentalized and directly linked with the first level. Whenever political opposition was strong – in parliament, or to governmental rulings, and particularly to decisions made by the president of the republic – the SPS would always appeal to patriotism and the national interest.

This intertwining of the second and third decision-making levels with the first was made possible, among other things, by the absence of a more developed civil society. In a normal democratic society, civil society should act at all three levels and fill in the spaces between them. Since this space remained empty and the 'civil public' could not resist effectively the highest agencies of political power, the president of the public – in which role, and even more in the person of which, power was concentrated – was able to mould the political system to suit his will.

Specific Features of Inter-ethnic Conflicts

In former Yugoslavia conflicts about and between collective identities created the main lines of political and social division. Unlike normal conflicts between interests, conflicts of identity (in this case ethnic identities) have several specific features.

First, these social conflicts – in which the level of exclusiveness is high and that of tolerance very low – are in principle 'either/or' conflicts. In the ethnic conflicts in former Yugoslavia, the number of people who adopted a neutral position gradually declined.

Secondly, because of the 'all or nothing' logic of such conflicts, the ground on which a common denominator or a compromise solution can be found is extremely narrow. As a rule, in these conflicts minimal demands by one side require maximal conces-

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sions on the other. A typical example of this is the demand for national self-determination, including secession.

Thirdly, conflicts between identities, and inter-ethnic conflicts in particular, often have a devastating effect. Typically, such conflicts spread contagiously through the social fabric – so that a feeling of national solidarity comes to encompass a far larger section of the population than just those who could properly be called nationalists. Many people in Serbia found it impossible to understand the high level of national homogenization in, say, Slovenia or Croatia, as they had not themselves experienced military planes flying overhead, or had not listened to or watched on TV their cities being besieged by artillery.

Fourthly, escalation is built into these kinds of conflicts: the longer the conflict, the stronger it becomes and the greater the chance that it will last even longer.

Fifthly – and this is linked to the fourth point – conflicts of identities, and inter-ethnic ones above all, can easily get out of control. History is full of examples that show how, above a certain threshold, even those who initiated, or wanted to manipulate, such conflicts can no longer control or stop them.

Finally, in conflicts of identities, both individual and collective, it is often the case that the parties involved are ready to sacrifice their own economic and other interests (including lives) if they consider their identities to be actually or potentially threatened. The behaviour of actors in an inter-ethnic conflict sometimes appears extremely irrational, even directly detrimental to their own interests (material and other); yet these actors, or those defending them, justify their behaviour in terms of some set of emotional, moral, or historical criteria or of a set of values.

All these characteristics are evident in the inter-ethnic conflicts in ex-Yugoslavia and this strongly confirms the ethnification thesis.

The War and the Responsibility of Intellectuals

In former Yugoslavia, one of the results of the ethnification of politics was war. Whether we describe it as a civil war or as something else, two of this war's characteristics were incontestable: it was primarily an inter-ethnic war, and it was one of the dirtiest and cruellest wars ever waged in this turbulent region.

Since Hobbes and Ferguson we have understood that war is the greatest enemy of civil society: one of the main prerequisites of civil society is peace.²⁰

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The war struck Yugoslavia like an earthquake. However, unlike an earthquake, a war does not break out by accident. Someone is always responsible for war. In the complex concatenation of events that caused the breakdown of Yugoslavia and the outbreak of war a key role was played by – and therefore the greatest responsibility lies with – national political leaders. Their incompetence, and their unwillingness to solve conflicts by political means, led us into war. (Of course, the particular responsibility of individual national leaders and their allied élites was not the same. History will tell us who was the most responsible.) At the same time, the feeble measures undertaken by a confused international community, often not familiar enough with the nature of the conflict, sometimes just added fuel to the flames of war.

For a long time, even after fighting had actually begun, most people naively thought that war was the least likely outcome of all. Yet some of the responsibility for what happened also rests with the citizens of former Yugoslavia. They have behaved as irresponsible, gullible, intolerant, vengeful and aggressive masses rather than as responsible citizens. The behaviour of the masses may to a large extent be explained as the product of political instrumentalization, and of ‘brainwashing’ by warmongering media. Yet we must ask: what are the sources of the massive support for the often highly aggressive and dangerous political programmes of political leaders and the newly emerged ‘fathers of the nation’? Sociology and the study of mass psychology will certainly help one understand what happened on the soil of Yugoslavia and former Yugoslavia.²¹

The tragic disintegration of former Yugoslavia in war clearly indicates that there is a close connection between militant nationalism and the decision to go to war. As old models of power legitimation dissolved and earlier ideological patterns, including entire value systems, were rejected, so old sources of collective identification began to empty or even to dry up completely. Nationalism appeared as the most accessible source of identity not only to the new political leaders and élites, but also to the masses, who were suffering a crisis of collective identity.

Nationalist political formulas were extremely successful in an unstable and as yet undefined pluralist political market; people with dubious political values and political orientations managed to become leaders and to mobilize the masses relatively easily; these masses were often transformed into mutually antagonistic ethno-centric groups.

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Would nationalism and the policies based on it have wrought such destruction without the wholehearted support of large sections of the intelligentsia? In Serbia at least, many members of the intelligentsia, above all the humanist intelligentsia, were important generators of nationalism. Hans Magnus Enzensberger, in his excellent essay 'On Manufacturing Hatred', though not asserting that intellectuals always consciously pursue a strategy of violence, warns that intellectuals, and writers in particular, are very successful in instigating hatred.

In identity conflicts, words, symbols, myths, as well as appeals to tradition and to the results of earlier conflicts, often play a significant and, indeed, a dangerous role; this was the case in the conflicts in ex-Yugoslavia. The use of strong and inappropriate language, and of symbols saturated with negative messages that (justifiably or not) aroused fear, the revival of expansionist national myths – in all of which intellectuals played a key role – preceded, accompanied and intensified the war among the nations of former Yugoslavia.

The Slovenian experience refutes the argument that Yugoslavia would not have disintegrated if civil society had been better developed. Time was up for socialist Yugoslavia at the point when its people no longer felt at home in it. But neither the Slovenian nor any other experience invalidates *a priori* the assumption that, had civil society in ex-Yugoslavia been better developed, the disintegration of the country would have taken a more civilized course. Though this is pure conjecture, it seems justified to assume that, had both civil society and civil culture been more developed, war could have been avoided: or at least it could have taken place with many fewer casualties, with less destruction, with less human pain and suffering.

The Significance and the Democratic Potential of Civil Society

The concept of civil society has always had a strikingly democratic character. The principles on which the civil idea rests – autonomy, pluralism, self-organization, solidarity, protection of privacy – are important preconditions of (and often also part of) any modern democratic arrangement of political life. Of course, this does not imply that any model of civil society, in whole or part, is *necessarily* democratic. However, there are grounds for asserting that civil society and democracy are natural allies. This is best seen when

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democracy is under threat: at a time like this, civil society as a rule will also be under threat. The relationship between civil society and democracy in the socialist countries, and in Serbia in particular, illustrates this very well.

A second important feature of the concept of civil society is that it is anti-statist. Here, however, we must be even more cautious than we were about the relationship between civil society and democracy. It would be wrong to assert that civil society is simply an anti-statist concept. For civil society assumes the existence of the state as a sphere separated from a more or less autonomous society. 'Civil society actors need the protection of the institutional order defending their autonomy and freedom of action. Civil society thus understood does not restrain the power of state, but legitimizes its authority, if it is based on the rule of law.'²² In other words, civil society does not exclude the state, but assumes it as a correlative concept. In the case of Serbia, one can perhaps assert further that the creation of a state of law and of the rule of law is the most urgent task, as this is the minimal precondition for a comprehensive development of civil society.

Civil society is anti-statist to the extent that, by its nature, it is the most serious critic of the state. Civil society is the most important counterbalance to the state and the political sphere. And one of the important functions of civil society is its curbing – as much as it can – of the expansionist aspirations of the state, or at least the defence of civil society against the attacks on, and the attempt to gain complete control over, society by the state and politics. This aspect of civil society has been central in discussions about civil society, particularly in the socialist countries before, during and immediately after the 'pluralist revolution', as in these societies all social and political life was thoroughly 'etatized'.

The third essential feature of civil society is its relative autonomy from the state and the political sphere. Civil society either has the necessary degree of autonomy or it does not exist. Thus the autonomy of civil society from the state and politics is perhaps one of its main *differentiae specifica*e. Of course, this autonomy cannot be absolute, and it is precisely here that perhaps the greatest theoretical and practical difficulties lie in analysing and understanding civil society. The 'autonomy of civil society' refers to the relatively free social space in which certain interests and needs – economic, cultural, religious, social, educational, and so on – can be self-regulated. If the state does not recognize or threatens the autonomy of this space, then, in the long run, it acts against itself and undermines its own stability.

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Each political system, if it is to be stable, must rely – in addition to political support – on non-political support. One may, indeed, say that four concentric circles constitute the basis of the relation between civil society and the state. The innermost circle consists of state power; this has to be clearly demarcated, institutionally and functionally. The next, wider, circle is the political sphere, in which the most prominent role is played by political parties and other political associations and institutions that do not belong to the sphere of direct state power. The third – and considerably wider – circle is civil society, which is relatively autonomous from state power and the general political sphere. Civil society is where various ‘life actors’ – citizens, their non-political associations and institutions, the public – are active. The fourth and widest circle consists of all other aspects of social life: family life, economic life, and so on. The essential distinction between the first two circles (state power and politics) and the latter two (civil society and society in general) is the logic according to which they function. In the first two circles political logic – the logic of ruling, the exercise of power – is determinant; in the latter two circles various kinds of unpolitical logics are at work: solidarity, creativity, and so on.

Serbia today is characterized by two processes which appear to be contradictory; they are, however, in fact complementary. On the one hand, strong centripetal forces attract all the parts of social life referred to above toward the sphere of state power. On the other hand, state power attempts to expand functionally – like a centrifuge – in order to curtail the space in which non-political social actors can act autonomously. These two processes threaten even parts of the political sphere: the authorities try to limit the space available to that portion of the political sphere which they regard as offering dangerous competition to the established monopoly of the dominant political formation.

The fourth feature of civil society is pluralism. Pluralism is an internal feature of civil society – it is the principle that shapes the evolution of civil life in its various forms: civil associations, institutions, and initiatives. In Serbia today, pluralism exists only in meagre form: civil society is underdeveloped; there is merely political pluralism. But even here, in spite of the existence of an enormous number of political parties and of the formal properties of pluralism, we seem to be witnessing an attempt to constitute a factual one-party monopoly within a formal multi-party environment.

In Serbia, on the whole, neither the government nor the political sphere are interested in civil society. To be more precise, it is not

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only that the existing political parties in Serbia, in power or opposition, are uninterested in civil society; they have been *competing* with a possible future civil society. It is to some extent understandable that the ruling party has no need of civil society: in the short run, the latter can only limit the scope of its power and influence. But what is inexplicable is that the self-proclaimed democratic and civil parties (with the exception of the Civil Alliance, which has little influence) do not understand the importance of civil society, and particularly the creation of a democratic public.

We are facing two basic questions in Serbia today: first, how likely is it that Serbia's embryonic civil society will survive the hard times through which Serbian citizens have been living? Second, how significant is civil society – small and suppressed as it is – for a democratic transformation of the political order? In order to answer these questions we need to consider what strategies are necessary to ensure not only that civil society in Serbia survives, but that it develops. It is, of course, civil society's relationship with the dominant political sphere that determines what the range of possible strategies is.

The political arena in Serbia today (that is, both the government and opposition) is – to use an ecological term – so contaminated that it cannot be expected, for a long time, to offer any serious stimulus to a comprehensive and long-term democratic transformation of society. Political parties in Serbia are a long way from being parties in the modern sense of the term. They are often hybrid formations, attempts to combine populist elements with strong leadership aspirations; and they usually have a weak organizational infrastructure. While the electorate, slowly but steadily, has been becoming more mature over several pluralist elections, political parties seem to be evolving in the opposite direction. On the whole they enjoy decreasing prestige among the citizenry. Their influence is declining, whether they are in power or in opposition, and they are less and less capable of articulating the needs of the electorate. Political parties in Serbia hinder rather than help the process of re-establishing civil society.

A maximalist strategy would involve making a new social contract that would both guarantee and protect basic civil liberties and stimulate the creation of new democratic institutions, procedures and rules. In her 1993 project 'New Agenda for New Democracies', Vesna Pušić proposed such a strategy for Croatia, a society whose social and political condition is in many respects similar to that of Serbia. However, this maximalist strategy seems unrealistic for

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Serbia, because it assumes either that the ruling party – the SPS – would voluntarily assent to it, or that the SPS could be forced to do so, neither of which seems likely in the foreseeable future.

Given the distribution of political power in Serbia, it seems more appropriate to adopt a minimalist, ‘small-step’ strategy. The main elements of such a strategy would be:

1. the consolidation and protection of the oases of civil life;
2. linking up the elements of civil society into networks and associations in order to reduce the danger of their becoming ‘ghettoized’;
3. the capillary, ‘invisible’ expansion of the autonomous aspects of social life;
4. encouraging the public to defend the independence of each element of civil society that is under attack (not just in order to defend this autonomy, but also in order to mobilize public opinion and so help create a democratic public);
5. to develop various forms of learning and training necessary for the creation of civil society (for example, learning about civil rights and the mechanisms for protecting such rights);
6. supporting civil initiatives;
7. drawing lessons from lost battles for civil rights (and, in general, learning from mistakes);
8. shifting the emphasis of civil activity out of those areas under state control into areas where the relations among social forces are more favourable;
9. defending and expanding the independent media, and supporting autonomous journalists in the controlled media;
10. mobilizing public opinion and the forces of civil society whenever possible (permanent mobilization is neither possible nor desirable in existing circumstances);
11. co-operating with and relying on the help of international civil society; and
12. presenting moderate and reasonable demands in order to attract competent supporters of the existing order who support democratic changes.

Notes

1. In Serbo-Croat, the term ‘civil society’ has been translated as both *civilno društvo* and *gradjansko društvo*. The etymological evolution of the concept was this: the ancient Greek concept of *koinonia politika* was trans-

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lated into Latin as *societas civilis*, from which the English *civil society* was derived, and the German *bürgerliche Gesellschaft* in German (J. Keane, 'Despotism and Democracy', in J. Keane (ed.), *Civil Society and the State*, London, Verso, 1988, pp. 35–6). Earlier Serbo-Croat translators from the English and the German favoured the term *gradjansko društvo*; the term *civilno društvo* has only recently been adopted. I prefer *civilno društvo* as *gradjansko društvo* carries unwelcome ideological ballast: Marxist discourse wrongly equated it with the term 'bourgeois society'. (On the other hand, I am also aware of the off-putting political connotation that the term civil society might have acquired in former Yugoslavia (SFRY) immediately before that country's disintegration; I return to this later.) In addition, in Serbo-Croat *gradjansko društvo* has a specific, narrow meaning: it refers to how city dwellers live. By contrast, the concepts civil society and civil rights refer to all citizens of a society, whether they belong to the urban or to the rural strata of the population.

2. George Schöpflin, *Politics in Eastern Europe*, Oxford, Blackwell, 1993, p. 19.

3. N. Machiavelli, *Selected Works*, Zagreb, Globus, 1985, p. 173.

4. Antony Black, *Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present*, London, Methuen and Co., 1984, p. 34.

5. Keane, op. cit.

6. This shows that arguments in favour of either conceptual approach were not constrained by national borders.

7. Pedja Marković, 'Theory of Modernization and its Application in Interwar Yugoslavia and Belgrade', in *Modernization Processes in Serbia in the Twentieth Century*, Belgrade, Institut za noviju istoriju Srbije, 1994, p. 437.

8. See Marković, *ibid.*; and Mira Bogdanović, *Modernizacijski procesi u Srbiji u XX veku (Modernization Processes in Serbia in the Twentieth Century)*, Belgrade, Institut za noviju istoriju Srbije, 1994, p. 47.

9. Silvano Bolčić, *Interesi i civilno delovanje u Srbiji početkom devedesetih*, in V. Pavlović (ed.) *Potisnuto civilno društvo (The Suppressed Civil Society)* Beograd, Eko-centar, 1995.

10. Zagorka Golubović, 'Traditionalism and Authoritarianism as Impediments in Development of Civil Society in Serbia', in V. Pavlović (ed.), *ibid.*, 1995.

11. Jean Cohen and Andrew Arato, *Civil Society and Political Theory*, Cambridge, MA, MIT Press, 1992, p. 3.

12. Claus Offe, *Contradictions of the Welfare State*, ed. John Keane, Cambridge, MA, MIT Press, 1984.

13. Zagorka Golubović, op. cit.

14. Tomaž Mastnak, 'Civil Society in Slovenia: From Opposition to Power', in Jim Seroka and V. Pavlović (eds), *The Tragedy of Yugoslavia*, M. E. Sharpe, 1992.

15. *Ibid.*, p. 65.

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16. Ljubomir Madžar, 'Electoral Pitfalls and Nationalistic Totalitarianism' in V. Pavlović (ed.), *ibid.*
17. Claus Offe, 'Ethnic Politics in East European Transitions', in Jody Jensen and Ferenc Mészlivetz (eds), *Paradoxes of Transition*, Szombathely, Hungary, Savaria University Press, 1993, p. 16.
18. Eric Hobsbawm, *Nations and Nationalism*, Zagreb, Liber, 1993, p. 184.
19. Claus Offe, 'Capitalism by Democratic Design? Democratic Theory Facing Triple Transition in East Central Europe', IPSA Congress, Buenos Aires, 1991.
20. Franco Ferrarotti, 'Civil Society and State Structures in Creative Tension: Ferguson, Hegel, Gramsci', *State, Culture and Society*, 1984, vol. 1, no. 1, p. 8.
21. Serge Moscovici, *The Age of the Crowd*, Cambridge, Cambridge University Press, 1985.
22. Larry Diamond, 'Toward Democratic Consolidation', *Journal of Democracy*, vol. 5, no. 3, July 1994, p. 5.



4

‘The Power of the Powerless’: Democracy and Civil Society in Macedonia

Gjorge Ivanov

In this chapter I define democracy as ‘a system for integrating the community through decision making’.¹

In order to be democratic, a system must satisfy at least four conditions:

1. democratically enacted laws must apply to all citizens;
2. there must be a division of power between the legislative, executive and judicial branches of government;
3. a source of political authority must be chosen in democratic elections (without widespread election fraud); and
4. there must be established channels through which citizens, between elections, can control and influence elected political representatives and the processes of political decision making.

The first three conditions pertain to the formal structure of democratic government, usually referred to as a *democratic state governed by law*. They regulate government and the conduct of state matters. These three conditions are satisfied in Macedonia (the reactions to the 1994 elections were an exception). The fourth condition is much more complex. In liberal systems, it refers to the role played by civil society.² This chapter elaborates on this role.

In 1991 Macedonia started building a liberal democracy.³ This entailed creating both a state and a society based on the experience of ‘Western civilization’.⁴ The rationale for separating state and society was that this would, in principle, limit intervention by the ‘general’ in the ‘particular’.⁵ This process of separation

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was a new experience in Macedonia. The word 'society' became the common term for the institutional pluralism which had been created autonomously, without political intervention, in the period 1989–91.⁶ In this period, individuals and collectives who were protected from the intervention of the party-state established their own normative projects; they then promoted these in the 'political public', from whom they sought support and among whom they tried to gain influence. Soon this protection was constitutionally and legally guaranteed:⁷ that is, it could not be removed without altering the entire structure of the newly created political system.

The functional separation of state and society achieved three goals. The first was self-regulation (which had been unattainable in a community structured by the socialist system). Individuals and collectives cannot make decisions of common interest without conflict; there was, therefore, a need for a specialized body which would make these decisions on their behalf.⁸ This entailed a recognition of the original pluralism of society,⁹ that is, the absence of (and the lack of desire for) a homogeneity of interests and goals.

Secondly, the acceptance of the separation of society and state established the need for government to be controlled. The difference between the governed and those that govern was clearly identified; it could no longer be claimed, therefore, that society 'governs', corrects, and controls itself. This functional separation of society and state made political power measurable: that is, political authority was limited, and its activities became measurable and subject to rational appraisal.¹⁰

Thirdly, the principle of the separation of society and state contained a mechanism that made immediate conversion of social authority into political power difficult. If the second goal was to limit the intervention by political institutions in 'collective action', here the idea was to prevent the reverse process: 'social collectivities' (that is, political parties and powerful business groups hiding behind the parties) establishing an institutional advantage over other collectivities. However, this idea was not fully realized. The creation of complex political decision-making procedures should have established filters through which all political influence would have to pass in order to be 'distilled' into political decisions. But delays in the enactment of such procedures meant that, instead – and quickly – alliances among various types of social influence in Macedonia were formed. The result was social problems such as corruption, crime, nepotism and other forms of 'uncivil society'.

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This form of activity replaced the state in the state sector and thus 'tarnished' this sector. As a result, any form of civil society was suspended.

The Power of Society versus the Power of the State

The history of the development of democracy indicates that the vitality and the energy needed to maintain and develop democracy come from society, not the state.

After the disintegration of the Socialist Federative Republic of Yugoslavia (SFRY), Macedonia was the poorest republic, with its institutions undeveloped and economically dependent on the Serbian economy, and with a decimated human resources base. Macedonia did not have its own 'school' of philosophy, or its own literary style; nor did it have any genuine dissidents who could dispute the legitimacy of the political order.¹¹ When the SFRY disintegrated, Macedonia had no strong social structures independent of the state – structures which are prerequisites for the creation and maintenance of stable, democratic, political institutions. Instead of having such institutions, Macedonia inherited the political infrastructure of the old regime.¹²

After independence in 1991, Macedonia entered a novel period in its history: Greece disputed the use of the name 'Macedonia'; Bulgaria recognized neither the nation nor the language; the country was affected by the sanctions imposed on the Federal Republic of Yugoslavia by the international community; Albania was in self-imposed isolation; the Yugoslav army was stationed on Macedonian territory; and Macedonian citizens participated as officers and soldiers in the Yugoslav army in the armed conflicts in Slovenia and Croatia. This contributed to the creation, for the first time, of authentic and original social structures in Macedonia that could be described as *civil society*.¹³ Many non-governmental entities, individuals, and émigrés participated in the lobbying for the international recognition of Macedonia;¹⁴ and mothers of soldiers in the Yugoslav army organized massive spontaneous protests in which they demanded that their children be relieved of serving in Slovenia and Croatia (these protests inspired the Movement for Pan-Macedonian Action [MAAK] to issue, on 29 September 1991, its 'Manifesto for the Demilitarization of Macedonia').¹⁵

A wide network of non-governmental agents – organizations, institutions and individuals – protected from the reach of the developing centralized state was created and displayed a high level of

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enthusiasm and initiative. The point of origin of these activities was the individual as citizen.¹⁶

This was the newly created autonomous space in which citizens began to overcome their loneliness, selfishness, their feeling of being lost and of having no future. A collective identity was formed.¹⁷ This was society, but it was also something more: an area of spontaneously created social structures separate from the state; the soil in which the roots of new political institutions could begin to grow. These structures took shape much more slowly than did political institutions, and they were less susceptible to manipulation by political actors. And they enjoyed an inversely proportional relationship with state power: when the state was weak, they were strong and active; later, when the state grew stronger, they became weaker and some even disappeared.

Civil society in Macedonia was a 'school of democracy'. It taught citizens how to coexist peacefully; it explained the content of and reasoning behind wider interests and shared values; it trained citizens for individual and collective public action; and it taught citizens to co-ordinate their short-term interests with long-term goals, and developed their sense of responsibility towards others and themselves.

With the widespread international recognition of the Republic of Macedonia and its entry into the United Nations (on 8 April 1993), it seemed as if all enthusiasm in, and potential of, civil society disappeared (or went into hibernation). Political parties began to play the central role in the establishment of democracy in Macedonia. The outcome was a 'partyocracy', or the 'party-ization' of society.¹⁸

The civil society that had been created autonomously (sometimes – because of the need to lobby for wider international recognition – with the assistance of the state)¹⁹ was abandoned and left to itself. At this point, various foreign foundations, missions, observers, and non-governmental organizations began to arrive and establish themselves in Macedonia in order to help build civil society. However, instead of supporting the established network of associations and initiatives, these foreign agencies began creating – or imposing – a 'new' civil society, and revitalizing the 'dead' imitations of civic association inherited from the socialist era.²⁰

Some parts of this 'new' civil society quickly became parasitic, as they not only failed to understand the purpose of civil society, but could not function without help from the government and various foundations. Some civil society actors made a nice profit by repre-

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senting themselves and their actions as independent of the government. They did not even mention issues such as the increasing 'etatization' of Macedonian life; that the government faced no opposition; the need for ethical visions of social life; or the question of citizens' confidence in society. In other words, the fourth condition required for democracy in the Republic of Macedonia (the creation of channels through which citizens, between elections, can control and influence elected political representatives and processes of political decision making) was absent.²¹ The absence of this condition whetted the state's appetite to subordinate society to itself.

So, what are the prospects for Macedonia in the sphere of civil society, and what are the possible political implications of any related developments?

If we agree that the expectations, and the capacities, of society in Macedonia significantly exceed the capacities of existing state and political institutions to meet these expectations,²² it follows that democracy in Macedonia needs to be consolidated. A key element of such consolidation is an autonomous, open, developed civil society that creates 'social capital'.²³ This is because civil society is the generator of democratic political culture, which in turn is a prerequisite for a stable democracy. Civil society establishes social pluralism by creating an infrastructure of associations. Social pluralism is a precondition of solid political pluralism, that is, of pluralistic (not ethnic) democracy. Civil society is also the source of civic identity. This is particularly essential for multicultural – that is, multi-ethnic – societies like Macedonia, as civil society promotes and affirms the value of differences and tolerance. Through permanent conflict and by constantly compromising one's interests with those of others, one can learn to see one's identity differently.

The providing of formal legal guarantees of a civil society free of 'party-ization' and 'ethnicization' are the fundamental function of the new democratic state in Macedonia. In a democracy, society is where freedom develops; all assessments about whether or not democracy is developing must start by assessing whether or not civil society is developing.

Democratic Consolidation

The literature on liberal democracy in the West and on the transition to democracy refers to four levels on which democracy is consolidated.

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The first level is that of ideology, of normative convictions about whether democratic institutions and market structures are right or wrong. Experience indicates that democracy cannot last long unless people believe that it is a legitimate form of government. However, a conviction that democracy is legitimate may be widespread even if democratic institutions have either not been created or not been consolidated.²⁴ On this level changes in the perception of legitimacy may occur almost overnight.

The second level is that of institutions, including constitutions, legal and political systems, and market structures. Changes on this level do not always proceed at the same pace as changes on the first level: that is, institutions change more slowly than perceptions of legitimacy.

The third level is that of civil society, the sphere of spontaneously created social structures separate from the state. Civil society is at the core of democratic political institutions. Its structures are shaped even more slowly than are political institutions.²⁵

The fourth and last level is that of culture. This includes phenomena such as the family, religion, moral values, ethnic awareness, awareness of civility and citizenship, as well as particular historic traditions. Just as democratic institutions depend on the existence of a healthy civil society, so civil society is preceded by culture. One can define culture as an ethnic heritage of habits transmitted through tradition. Even though developments on the first three levels may affect culture, culture is the hardest of all levels to change.²⁶

After 1990, as part of the 'domino effect' following the changes in 1989 in the socialist countries, there was an almost instantaneous change in normative convictions. This change generated great expectations, expectations which could not be fulfilled precisely because of problems encountered on the other three, more complex, levels. In some Balkan countries, these difficulties meant that movement towards democracy died away even before appropriate institutions had been established. In other countries, the gap between expectations and reality is already threatening the progress achieved in the consolidation of institutions; indeed, it is prompting a rejection of the democratic transition as such.

The main difficulties facing Macedonia lie on the third and fourth levels. There is almost no disagreement on the first and second levels. That is, it would be very difficult to identify rival ideologies, and there are not many institutional arrangements that would weaken enthusiasm for democracy.²⁷ However, almost all

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problems and difficulties associated with the quality of life in a democratic environment are directly linked to social and cultural pathologies that remain far beyond the reach of institutional solutions and public policies. Culture, therefore, is the most important level of democratization.

Political Culture in Macedonia

The essential features of political culture in Macedonia are the deficit of democratic traditions and the country's pronounced cultural heterogeneity.

The prolonged period of political and cultural subservience to autocratic rulers and oligarchies (which were rejected not only because they lacked democratic legitimacy but also because they belonged to an outside or alien culture, that is, to an 'enemy nation'), or subservience to a state that most of the population considered to be an alien occupying force, have produced in Macedonia a reserved and confrontational attitude towards any 'authority'.

To most people, the word 'authority' suggests a ruler with unlimited control over his subjects. This is the polar opposite of the type of government defined in the current constitution: a civic government that executes the will of sovereign citizens. People do not display loyalty towards 'authority', or indicate that they accept its decisions, or that they are willing to participate in the making and implementation of decisions; instead they try to avoid contact with authority, or, if possible, to cheat it.²⁸ People's identification with the state and its organs is weakening (due to the process of 'party-ization' described above); at the same time, identification with the extended family is particularly important (especially in the ethnic Albanian population), as is identification with one's local community (local 'lobbies'), and with the 'nation'.

In the past the harshness of everyday life created a need for members of different ethnic and religious groups to co-operate and coexist (first in material and later in cultural terms). This tradition of co-operation created oases of authentic, traditional civil society such as the 'institutions' of the village, the promenade, the 'city restaurant', and the city tea shop; the celebration of family saints and religious holidays; fairs; as well as voluntary activities such as bringing in the harvest and fruit picking. This tradition has survived for centuries and is reflected in many oral and written works. In the preamble to the 1991 constitution of the Republic of

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Macedonia it is defined as 'coexistence' (*sozitelstvo*). However, as a result of the urbanization, modernization and the 'ethnicization' of everyday life that started in 1989, this traditional 'civil society', slowly but steadily, is disappearing,

The cultural diversity of Macedonia is evident in the fact that Macedonians speak various, sometimes unrelated, languages (Macedonian, Albanian, Turkish, Vlach, Roma), as well as in the various religious affiliations of the population and the country's consequent subjection to different external cultural influences. Roughly, one can differentiate between the east-central and the western parts of Macedonia. The former is dominated by the Eastern Orthodox tradition with its pronounced mystical characteristics, such as the notion of belonging to the community (the community of the 'nation' and a secular ruler; the community of the 'nation' and God); this is manifested at the empirical level in a form of ethnic nationalism and in a tight coupling of autocratic secular 'authority' and clerical authority.²⁹ In the western part, Islam plays an important role as a universalist culture, but it cannot easily be included in European processes of modernization and is incompatible with the liberal concept of civil society.³⁰

These traditions are much more significant than similar traditions in other European countries, because the Enlightenment had little or no influence in the area of present-day Macedonia; the homogenizing effect produced by a radical criticism of all pre-Enlightenment traditions was never felt. The consequences of this are clear in today's political culture, in which is displayed only erratic enthusiasm for different forms of political action.

On the other hand, the presence in Macedonia (for almost half a century) of communist authority has left, in the form of a communist culture, a deep impression. The Bolshevik-communist movement enjoyed most support in Eastern Europe, where it absorbed many of the patriarchal, authoritarian and militarist features of these countries' cultures. Marxism-Leninism was close to some pre-modern forms of political culture, which are incompatible with civil political culture.

Marxism-Leninism's ideological rejection of the state – the idea that the state was doomed to 'extinction' – could not stimulate citizens to identify with their state. Militant atheism, dominant in the period of communist rule, undermined centuries-old religious traditions and instilled moral cynicism in the disoriented population. Widespread lawlessness and marked social differences made the 'every man for himself' principle dominant in Macedonia. The

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thought and behaviour associated with this principle are incompatible with the notion of regulating social relations by law, and with the idea of rationality in human relations. The collectivism imposed from above in the form of mass organization promoted conformity, which is incompatible with creativity and the readiness to take risks for oneself. 'Authoritarian paternalism' created minions who bowed to authority and were ready to accept their subjugation to 'the authorities', when they should have demanded that the state legitimize itself as a representative of all citizens.

These aspects of the political culture of Macedonia remain almost unchanged to this day. This communist heritage – together with people's enthusiasm for charismatic leaders and their intolerance of diversity in everyday life – makes it likely that Macedonian citizens will become agents of civil society only with difficulty.³¹

Civic Identity

The varieties of nationalism in Macedonia indicate not only that an affiliation with the 'ethno-nation' (when the identity of an individual is determined by his destiny) is fundamental for people, but also that people ascribe extraordinary properties and potentials to an idealized 'ethno-national identity'. Such views, on one hand, make it easier to reject others (this is precisely what promotes centrifugal tendencies in Macedonia); on the other hand, these views reduce the likelihood of the 'sovereign state' of the 'people' (the 'nation' in the political sense) becoming a modern state that guarantees human rights and the equality of all citizens before the law.³²

The similarity of the state and the nation in a liberal sense consists in the fact that the state, like the nation, is an identity-creating collective. The identities the state generates can, in a broad sense, be called civic; they are included in legal norms that regulate citizenship. Nevertheless, the evidence indicates that civic identity is generally not as strong as an identity generated by ethnicity. This is indicated above all by the fact that ethnicity has penetrated deeper into people's everyday lives, and has done so in opposition to civic identity. Politically significant segments of the population think that the state does not represent their hopes and aims; they perceive it as alien and unnatural. Ethnic affiliation is stronger than civic affiliation, and it may result in the ethnicization of the state or in the marginalization of ethnic minorities. A perception is being created in Macedonia today that the most efficient way to consoli-

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date relations between the individual and the state is to ethnicize the state, that is, to turn it into an ethno-national state.

When a political community is mobilized in the course of ethnicization, the danger exists that a political system with totalitarian tendencies will be created. Ethnicization re-establishes the supremacy of the political sphere above all others; and all political programmes are formulated in terms of the ethnic or ethnicized nation, instead of in terms of civic identity. All ideas, aspirations, and goals are analysed and discussed in accordance with the imperatives of ethnicity. When this happens, the search for enemies begins, conspiracies are uncovered, and the population is manipulated through appeals to collective emotions.

Ethno-national self-affirmation and the replacement of class-based ideology by an ethno-national consensus are the only factors that link the various coalitions that have arisen in the period of political transition and emancipation in Macedonia. Politicians in Macedonia increasingly take advantage of the social and political inexperience of the population. Political science tells us that when this type of ethnicization starts, it is very hard to stop – and demobilization of a population takes a long time. In such circumstances, societies lose the ability to define their interests in terms of material and civic criteria, and forget to use any kind of discourse other than that of ethnicity and personal loyalty.³³

Prospects

The first steps towards democratic consolidation have been taken in the Republic of Macedonia, but mainly on the first and second levels referred to above. Change has taken place in terms of normative convictions and institutions. In real life and the political sphere the story is quite different; changes are much less pronounced in the sphere of civil society, and they are almost absent in culture. This has produced three types of people in terms of attitudes to politics and political institutions, and three types of political culture. The three types are the 'submissives', the cynics, and citizens. 'Submissives' can be identified by their acceptance of the existing system and its demands – they offer no opposition. Cynics manipulate people and institutions to their own advantage. Citizens are critical of the existing system – of its institutions, its projects, and its values. The predominance of 'submissives' and cynics in Macedonia has resulted in an absence of community influence on political decision making at the national level. This is evident from the fact that almost all political decisions are made by the government.

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This state of affairs will only change if a stable civil society emerges – as an element of a modern civil order in which citizens, not ‘submissives’ or cynics, predominate. Such a civil society could be created if there were a political will to do so: this is possible in Macedonia, but unlikely. Democracy grows from the bottom up; it cannot be imposed by force from above. Civil society has to be built from the inside out. In Macedonia, this could be achieved only if the following goals were met:

1. collectivism would have to be replaced by individualism;
2. personal autonomy would have to replace submission;
3. tolerance and a conciliatory approach to social problems would have to replace ethno-nationalism and a world view that is always looking for ‘enemies’;
4. individual activism and creativity would have to replace passivity; and
5. a rational loyalty towards society and its state (civic and constitutional patriotism) would have to replace an emotional identification with one’s ‘people’ (nationalistic patriotism).

Notes

1. Schumpeter, Lipset and Dahl also define democracy in this way. Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*, Zagreb, Globus, 1981; Seymour M. Lipset, *Politički Čovek (Political Man)*, Belgrade Rad, 1967; Robert A. Dahl, *A Preface to Democratic Theory*, Chicago, IL, University of Chicago Press, 1956.

2. Timothy Garton Ash was among the first to define (without serious theoretical pretensions) what should be expected of civil society in Central and Eastern Europe. ‘[In civil society there] should be forms of association, national, regional, local, professional, which would be voluntary, authentic, democratic, and, first and last, not controlled or manipulated by the Party or Party-state. People should be “civil”: that is, polite, tolerant, and, above all, non-violent. The idea of citizenship [has] to be taken seriously’ (Timothy Garton Ash, *We The People*, London, Granta/Penguin, 1990, p.147, and also in *The Uses of Adversity*, New York, NY, Random House, 1989, p. 270).

3. On 8 January 1991, the first multi-party parliament of the Socialist Republic of Macedonia was constituted. The designation ‘Socialist’ was officially removed from the name of the state on 7 June 1991.

4. It should be noted that differentiating between state and society does not assume that state and society are two separated spheres or organizations that compete for the exclusive representation of the people (as in eighteenth-century Europe). If the state–society relationship is analysed

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sociologically, it becomes clear that the state is a subsystem of society, with the special role of making binding decisions. See John Keane, 'Introduction', in J. Keane (ed.), *Civil Society and the State, New European Perspectives*, London, Verso, 1987.

5. The process of division began in 1990 under the influence of changes taking place in the former socialist countries and in Slovenia. Discussion of this process took place mostly in youth and college press (*Mlad Borec* and *Studentski Zbor*) and to an extent also in the 'Goshev Commission'.

6. In this period alone, over fifty parties were established, as well as many civic associations: ethnic associations, independent labour unions, women's organizations, religious sects, and civic initiatives. There were also anti-war protests (protests by mothers of Macedonian soldiers serving in the Yugoslav Army); workers went on strike; private radio and television stations and private newspapers were established; and open call-in shows on national radio and TV were set up.

7. This took place on 20 September 1990 when the Parliament of the Socialist Republic of Macedonia adopted 25 amendments to the existing constitution. The new constitution was enacted on 17 November 1991.

8. This came out of the discussion on 29 August 1990 in the Parliament of the Socialist Republic of Macedonia, when the first 'round table' on amendments to the existing constitution and the new election law was held. Representatives of registered political parties and associations also attended.

9. This was achieved by the enactment of the Social Organization and Civic Associations Act, which legalized a party pluralism that was already developing (*Official Gazette* of the Socialist Republic of Macedonia, no. 12, 1990).

10. This characteristic of political authority in the Republic of Macedonia began to disappear after the second parliamentary elections in 1994, when the field of action enjoyed by political authority became almost unlimited, and the state began to dominate various aspects of private and civic life.

11. Political 'enemies' of the previous (socialist) system had generally been accused of having nationalist and separatist, not liberal, ideas. The only critics labelled 'liberal' remained – with very few exceptions – members of the Communist Party. More on this in Tome Batkovski, *Velikoalbanskata Igra vo Makedonija*, Skopje, Mugri 21, 1994; and Gjorgii Marjanovik, *Stručen Trud*, Skopje, Aleksandrija 1995.

12. Adam Michnik, an expert on this situation in post-communist countries, argues that an inherited infrastructure of this kind cannot restore the old order but it can cause 'gangrene' in democracy. Adam Michnik, 'The Velvet Restoration', *The East and Central Europe Program Bulletin*, vol. 5/1, no. 16, October 1994, New York, NY, New School for Social Research, p.7.

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13. Civil society as a concept connects civil rights, civic associations and the public in one common sphere. This sphere, called *Lebenswelt* (life-world) by Habermas (Jürgen Habermas, *Theorie des kommunikativen Handelns*, Frankfurt a. M. 1982, vol. 2, p. 471), or 'non-state' by Bobbio (Norberto Bobbio, *Stato, governo, società*, Einaudi, 1985, pp. 25–26), is always opposed to the 'world of the order': the systematically integrated, complementary areas of the economy and state. Civil society is a market-regulated, privately controlled and voluntarily organized area of social life, and thus is an aggregate of institutions, the members of which are primarily engaged in non-state activities, (John Keane, *Democracy and Civil Society*, London, Verso, 1988, p.14). Civic associations (such as non-governmental organizations) are the most essential collective actors (but not the only actors). Some civic institutions also act in this sphere: family, churches, charity and humanitarian associations, private foundations, the education system and universities (independent of the state), the free press, independent electronic media, computer networks (not controlled by the state) and the Internet. More on this in John Keane, *Civil Society: Old Images, New Visions*, Cambridge, Polity Press, 1998, and Gjorge Ivanov, *Civilno Opstestvo*, Skopje, Step, 1994.

14. The international Macedonian lobby was established by John Bitov in Toronto, Canada. Later, Bitov and the Macedonian Human Rights Committee of Australia established a Macedonian World Congress, which enjoyed the full support of President Gligorov and the cabinet of the government of the Republic of Macedonia. This organization was later opposed by another Macedonian World Congress, established by people supported by the VMRO-DPMNE political party. The Macedonian Information and Liaison Service (MILS), established in Brussels and later in Skopje, and the Macedonian Information Center (MIC), also played significant roles. Both news agencies sent out daily news through the MAK-NEWS Internet mailing list. See Lauren M. Danfort, *Makedonskiot Konflikt*, Skopje, Makedonska Kniga, 1996, p.156. At the time, there was an Internet 'war' over the international recognition of Macedonia (alt.news.macedonia). More information about this is available at <http://www.makedonskosonce.com/sonce238/text19.htm> and <http://metalab.unc.edu/usenet-i/groups-html/bit.listserv.makedon.html>

15. These protests intensified after 6 May 1991, when a Macedonian soldier, Saso Gesovski, was killed in Split, Croatia.

16. The legal basis for 'civic status' had been created by Amendment 56 to the Constitution of the Socialist Republic of Macedonia: 'Citizens are agents of authority, which is exerted through representatives in the parliament of the Republic ...' (*Official Gazette*, no. 28, 1990).

17. An important role was played in this process by political parties, independent labour unions, ethnic associations, associations for friendship with citizens of other countries, and so on. See note 6.

18. The presidents of sports federations, management boards, supervisory boards, and so on, are exclusively 'party people'. Government decision

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making is not transparent; as a result, civil society has no influence on state decisions.

19. See the agenda of the cabinet of the government of the Republic of Macedonia, 20 June 1991, pages 9 and 12, and transcripts of parliamentary sessions where the prime minister reported on the process of acquiring international recognition of the Republic of Macedonia.

20. The social organizations and civic associations of the socialist period were not autonomous forms of association, and so cannot be defined in terms of the liberal concept of civil society. They were established, financed and controlled by the state-party and co-ordinated by its satellite (the SSRN – the Socialist Federation of the Working People) in order to mobilize the population and legitimize the totalitarian order. See Gjorge Ivanov, *Civilno Opstestvo*, Skopje, Step, 1994; and John Keane, *Civil Society and the State, New European Perspectives*, London, Verso, 1987.

21. The only massive civic initiative of this period – to gather 150,000 signatures in support of a referendum on early parliamentary elections – which was initiated and implemented by the political parties DP and VMRO-DPMNE on 24 March 1996 was rejected by the parliament.

22. As is indicated by public opinion polls. See, above all, *Public Opinion Polls on Social and Economic Reform*, Skopje, Institute of Sociological and Political-Legal Research, March 1996: for example, 86 per cent of respondents do not trust the effects of privatization; 57 per cent think that the government is to blame for the situation; and two-thirds think that the state government is corrupt.

23. This thesis is elaborated in Robert D. Putnam, *Making Democracy Work*, Princeton, NJ, Princeton University Press, 1993. Putnam analyses the tight coupling between socio-cultural factors and economic development.

24. Developments in post-authoritarian Spain, Portugal and Greece confirm this fact.

25. Civil society gained currency after the fall of communist regimes, when people saw that post-communist societies lacked the social structures that are a prerequisite for stable democratic political institutions. Civil society was restored fairly quickly in Poland, Hungary, the Czech Republic and the Baltic states, where alternative élites had been ready to topple the communist regimes. The economic transformation in these countries was supported by the development of a healthy private sector, and political life is gradually coming to resemble the familiar West European models.

26. G. Almond, S. Verba, *The Civic Culture*, Princeton, NJ, Princeton University Press, 1963, p. 34.

27. Fukuyama concludes that ‘social engineering at the institutional level has hit a wall; experience from the past century has taught most democracies that ambitious re-arrangements of institutions cause more problems than they solve’, (Francis Fukuyama, ‘The Primacy of Culture’, *Journal of Democracy*, vol. 6, 1995).

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28. Recently, politicians, journalists and intellectuals have tended not to use 'authority' or 'government'; they prefer nebulous formulations such as 'position'. This is reminiscent of Macedonian folklore, where mention of the devil is avoided, and other names used in its place.

29. The direct influence of the Byzantine Empire and its concept of 'symphony' (sometimes 'taksiarchy') is evident here. See H  l  ne Ahrweiler, *L'id  logie politique de l'empire Byzantin*, Paris, PUF, 1975.

30. Serif Mardin, 'Civil Society and Islam', in John A. Hall (ed.), *Civil Society – Theory, History, Comparison*, Cambridge, Polity Press, 1995, pp. 278-300.

31. If this trend persists, totalitarianism may very well reappear, only this time it would not be imposed from above by the state but would come from the people.

32. Nations that are based on ethnic communities continue to provide a basis for survival thanks to the unwritten moral laws of the communities, the means of communication specific to the communities, and the existence of bonds of loyalty within the community. Seen in this light, not only is the nation an authentic collective, but awareness of nationhood has a decisive role in maintaining the community. See George Sch  pflin, 'Civil Society and Nationhood', *International Research Project: The Suppressed Civil Society – The Possibilities for Democratic Change Toward an Open Society*, University of London, 1995, p.1.

33. The current situation indicates that ethno-national emotions can be even stronger than economic interests.



5

Democracy and Democratization in
South Eastern Europe

Joseph V. Julian

Democratization: Who Should Govern?

This chapter addresses the political dimensions of the democratic reconstruction of the Balkans. In so doing, it poses two questions: how do we get from here to there? What is the political process that might be employed to further democracy in South Eastern Europe?

The scholarly work in this area presents conflicting views. While the word 'democracy' is of Greek origin, the city-states of ancient Greece extended the right of political participation to a small minority of the inhabitants of the city. Over time, this view of governance evolved into a political theory which said that if democracies were to be stable and secure they should be ruled by the élites of their societies. It is a philosophy that has gained the support of a number of right-of-centre political theorists. But it was the advocacy of this school of thought by Joseph Schumpeter that has had the most substantial impact on contemporary political thought. The Austrian political economist fashioned the argument that the average citizen is not sufficiently rational or responsible to make sensible decisions on political matters. As a consequence, Schumpeter's approach to democracy gives citizens a modest role in governing. They can vote, and they can accept or refuse those who rule them.¹

But the past few decades have witnessed the revitalization of the vision of open societies that calls for an expanded role for democratic citizens. A growing number of liberal theorists have taken issue with those who support governance by political élites.

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C. Wright Mills argued that the policies of the 'high and mighty' undermine modern democracies. Therefore the time has come to give citizens more direct input into the political process.² Those who subscribe to this school of thought put the case this way: élites, public officials and public leaders can construct buildings, roads and bridges, but they cannot build the political will necessary to deal with the difficult public problems of our time. Only citizens can build political will.

So, for social systems in transition like Montenegro and Serbia, the question is, which of these competing conceptions will further the building of a strong and secure democracy: giving leaders more authority and autonomy, or broadening the political base to ensure more citizen participation?

Schumpeter's theory of elitist democracy was shaped by the political turbulence of the 1930s and 1940s. It was a time that saw the collapse of democratic idealism. People were given a right to choose in Europe, and they chose to be led by Mussolini and Hitler. Schumpeter drew on the works of other political theorists like Mosca and Pareto to reinforce his view that political leaders must be given the autonomy and authority to build stable societies.³ Indeed, that became a pressing necessity as the early twentieth century confronted the dangers of fascism and communism. As Schumpeter saw it, citizens were unable to address the hard realities of public life. As he put it:

When we move away from the private concerns of the family and the business office into those regions of national and international affairs that lack a direct and unmistakable link with those private concerns, individual volition and command of facts soon cease to fulfil the requirements of the classical doctrine... The sense of reality is completely lost. Thus, the typical citizen drops down to a lower level of mental performance as soon as he enters the political field.⁴

If the events that led to World War II created the rationale for Schumpeter's elitist theory of democracy, the Cold War reinforced the argument for a 'realistic' view of democratic governance. In many respects the early post-World War II period was marked by serious reservations about popular participation for fear that the demands of modern mass societies would make democracies ungovernable.

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Isaiah Berlin's 1958 lectures at Oxford University reflected this climate of opinion. Central to his lectures was a passionate attack on what he called positive liberty – the direct participation of citizens in democratic governance. He saw the defence of what he called negative liberty – freedom from tyranny – as being the primary objective of free societies. Moreover, the positive concept of freedom was seen as dangerous, for it could be, and had been, used by tyrants to justify the use of oppression as a vehicle for furthering the public interest.⁵

The Post-World War II Evolution of Participatory Democracy

If the early phase of the Cold War underscored the need for rule by élites, the German and Italian transitions to democratic social systems pointed to the need to strengthen the role of citizens in the new democracies of Europe and elsewhere. What became clear is that strong democracies call for strong civic cultures. The development of such cultures came to mean the promotion of democratic citizenship. That meant creating an appropriate relationship between the responsibilities of individual citizens to the nation and to each other. That, of course, provided the justification to encourage citizen participation.

As a result several scholars began to view the Schumpeter theories as too elitist. One of the most persuasive arguments against the rule of élites was made by a member of Marshal Tito's inner circle, Milovan Djilas, author of *The New Class*.⁶ Perhaps the greatest intellectual dissident of his time, Djilas called for the democratization of the Yugoslav system and in many ways articulated the need for *perestroika* – some three decades before Mikhail Gorbachev announced it as a policy for the Soviet Union.

This challenge to the power of unaccountable political élites gained the support of a number of liberal political theorists. Peter Bachrach expressed their concern with the elitist theory in the following comment:

This general theory purports to be above ideology, but is in reality deeply rooted in an ideology which is grounded upon a profound distrust of the majority of ordinary men and women, and a reliance upon the established élites to maintain the values of civility and the 'rules of the game' of democracy... While embracing liberalism, it rejects, in

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*effect, the major classical democratic belief and confidence in the people.*⁷

This questioning of the rule of the old order became increasingly viable in the 1970s, 1980s and 1990s. It was to be seen in a number of movements that engaged citizens on a wide array of issues. These movements focused on issues such as war and peace, the environment, race relations, women's rights, and the rights of gays. With the closing of the twentieth century, citizen participation became an important part of the democratization process.

The Return of the Ruling Class?

This ongoing objection to the rule of élites continues to be resisted by some centre-right political scientists. In their report to the Trilateral Commission, Samuel Huntington and Michael Crozier maintained that the citizen participation movement threatens the stability of today's democracies. If the movement continues to grow, liberal democracies might well become ungovernable.⁸

This is a position that has been endorsed by several social scientists and public policy specialists. It is their contention that, with the citizen participation movement, people have higher expectations of what their governments can do for them than were entertained by earlier generations. The efforts by governments to meet these expectations put a heavy burden of costs on governments' financial resources, which cannot easily be met unless national economies are constantly growing, so that enhanced revenues are available to meet increasing costs.

This thesis is advanced by a book entitled *Can Government Go Bankrupt?* A central concept of this book is 'government overload', defined as a situation 'in which the national product grows more slowly than the costs of public policy and the claims of take-home pay, and there is not enough money on hand to meet both public and private claims'.⁹ This was said to be an immediate and serious problem for Western democracies in the 1970s. However, with the fall of the Berlin Wall, it came to be viewed as a problem for the new democracies of East-Central Europe as well.

As a result, Western policy makers now demand that these societies in transition comply with austerity programmes, privatization schemes, and an ongoing reduction of social welfare programmes. This relationship between the Western powers and the new democracies can be seen as a further elaboration of

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Schumpeter's theory of elitist democracy. Indeed, one observer goes so far as to say that this relationship is a new form of Western 'remote control colonialism'. The following is a summary of his position:

The governments of the Czech Republic, Poland, Hungary, Estonia, and Slovenia look and sound independent – but in reality their freedom of action will be evermore constrained by the requirements of their Western neighbors. So expect to see much louder and more pressure from Western Europe on the politicians of Eastern Europe in the coming months. Expect too some rather less public intervention to raise standards: moral standards that is. Selected law enforcement officials from Eastern Europe have already been sent for training in the West. Under the guise of 'exchanges', the next stage will be to put Western officials in place in Prague, Budapest and Warsaw – nominally to serve as liaisons, but in fact to monitor, encourage, scold and warn.¹⁰

This has prompted a growing backlash by the countries in East-Central Europe against the Western powers in general, and the European Union in particular. It is a reaction that has been exacerbated by French President Jacques Chirac's proposal to create a 'pioneer group' of EU members that would shape the Union's policies on economic, defence, and foreign policy issues. This proposal strengthens the view that the élites of Western Europe have become an overbearing Big Brother, insensitive to those who champion self-government and citizen participation in Europe's post-communist societies.

Competing Notions of Democratization

What this means today is that these competing notions of democracy can have a major impact on the future of South Eastern Europe in general and of Serbia and Montenegro in particular. The one version – that of elitist rule – is at odds with the notions that citizens should be given a role in shaping their futures. Which of these competing political concepts will help to keep the peace and rebuild society in this region? The hope of the future rests with greater citizen participation. Giving citizens a public voice can ease the stress associated with economic and political change.

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First, what have we learned about citizen participation and economic development? Changes in the economy can be unsettling and disruptive. Privatization often means unemployment, the closing of obsolete factories, and social unrest. The reflections of Yegor Gaidar, Boris Yeltsin's first deputy prime minister, are especially noteworthy in this area. He now concedes that one of the great failures in Russia in the early stages of privatization was the failure to see this movement as one with pronounced political consequences. In retrospect, he says, it was more than a problem of economics. He now says that he and others did not see the importance of developing broad-based political support among citizens for economic change in Russia.¹¹ They left this area of change to the economists alone, rather than viewing it as a major political issue about which citizens should be consulted and be given a public voice. Russia now lives with the consequences.

Lessons on transition and economic change were also learnt during the recent financial crisis in South East Asia. As the crisis began to unfold, the prevailing view was that the short-term impact of the crisis would result in great economic pain. But with the IMF rescue package of some 100 billion dollars, there was a sense that the economic and financial indicators would point to a more promising future.

In addition to the agreement with the IMF that cut government spending, tightened monetary policy, and restricted the banking sector, there were calls for democratic reforms. Kim Dae Jung, the president of South Korea, said: 'Development is about more than the right policies, even more than good social involvement. Development, in short, requires good governance, meaning open, transparent and accountable public institutions.'¹²

There is substantial evidence that good government can contribute to the resolution of a financial crisis. Those entities with the most transparent and accountable social systems – Taiwan, Hong Kong, and Singapore – were hurt the least. But, even as some political reforms were being implemented, there were those who asked if good government alone was the answer.

Reforms, of course, legitimate the measures needed to deal with corruption and favouritism. However, at the height of the crisis in South East Asia there was also concern with the question of whether political reforms alone could persuade citizens to accept mounting unemployment, rising food costs, and massive bankruptcies. The concern of foreign corporations had become so pronounced that Prime Minister Phan Van Khai of Vietnam held

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an unprecedented 'town meeting' with foreign investors.¹³ However, little was done in Vietnam or elsewhere throughout the region to enlist the support of the public.

This underscores a point that Jane Mansbridge of Harvard University has made about societies in transition and emerging democracies. She says democracy is a hybrid idea, with one vision creating fair procedures for resolving conflict and furthering individual preferences, and the other encouraging deliberation about how best to promote the common good.¹⁴

Unfortunately, some practising politicians in transitional societies tend to understand democracy in only one of these two ways. For them democracy is an adversarial system that assumes conflicting interests and develops rules under which each side attempts to 'win'.

Mansbridge writes that 'this is the politics of power, not persuasion'. It encourages participants to focus solely on their self-interest 'rather than finding a course of action that is best for the whole society'. She says 'the dynamic of adversary democracy has traditionally made democracies incapable of the kind of sacrifices' now being asked of citizens in transitional societies.¹⁵

Yet history tells us that citizens will sacrifice even their lives when they believe that the sacrifice is for the common good. Management studies show that when employees participate in making decisions they are more likely to accept the results. And there is a growing body of scholarship which says that this is also the case for public life – that discourse and deliberation can generate the will to accept difficult political choices. It can create results that even adversaries can accept.¹⁶

Political Reconstruction and Citizen Engagement

What this suggests is that simply announcing policy choices from Podgorica [the capital of Montenegro], Belgrade, or Washington may do little to persuade citizens to tolerate the hardships associated with economic and political reforms. In addition there should be a process to help citizens become stakeholders in Montenegro's and Serbia's future. There must be opportunities for citizens to meet, to talk, and to deliberate about equitable ways of distributing the burdens generated by reform movements. Citizen participation, study circles and forums can create policies that can command the loyalty and support of the citizens who participate in creating them.

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But the transition of South Eastern Europe means more than economic change. There are other pressing issues in the region: how to heal the wounds of conflict; how to keep the peace; and how to rebuild a viable society. And here, too, the research of the recent past points to the need to foster citizen engagement.

In its ongoing study of how to rebuild societies, the Graduate Institute of International Studies in Geneva states that, when faced with societies that have gone through conflict, the international community has turned out to be ill-prepared, ill-equipped, inflexible, and frequently marked by organizations operating at odds with each other. As a consequence, its War-Torn Societies Project calls for greater co-operation between UN agencies and non-governmental organizations. And, second and more important, it sees the need for a strategy that systematically encourages local people to take on greater responsibilities themselves. As the Institute's study puts it: 'having lived through the ordeal of ethnic stress, of war and conflict, they are best placed to know the priorities of action, the need of involving all parties in the common endeavor of reconstruction, and the promotion of a sense of joint responsibility for what will be their future'.¹⁷

The study says that external aid is essential to rebuilding societies like Montenegro and Serbia, but that such assistance must be based on a better understanding of local situations, better qualified field personnel, less competition, more co-operation between international organizations and, as the study puts it, 'above all, participation of the local population'.¹⁸

This forcefully underscores the need to move beyond a political reconstruction process involving political leaders alone. Since conflicts like those that have taken place in South Eastern Europe are often rooted in the relationships between peoples, a key to dealing with the conflicts is changing relationships, and that is perhaps as much the work of citizens outside government as it is the work of governments themselves.

In conclusion, this suggests that the building of strong democracies will flourish if citizens are given a public voice – one that will strengthen a partnership that is central to self-government. For a South Eastern Europe in transition, this means that governments cannot do their work unless the people do theirs.

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Notes

1. Joseph Schumpeter, *Capitalism, Socialism and Democracy*, New York, NY, Harper and Bros., 1942.
2. C. Wright Mills, *The Power Elite*, New York, NY, Oxford University Press, 1956.
3. R. A. Nye, *The Anti-Democratic Sources of Elite Theory: Pareto, Mosca, Michels*, London, Sage, 1977.
4. Schumpeter, op. cit., p. 262.
5. Isaiah Berlin, *Four Essays on Liberty*, Oxford, Oxford University Press, 1969, p. 133.
6. Milovan Djilas, *The New Class*, New York, NY, Praeger, 1957.
7. Peter Bachrach, *The Theory of Democratic Elitism: A Critique*, Boston, MA, Little, Brown, 1969, p. 93.
8. M. Crozier, S. Huntington and J. Watanuki, *The Crisis of Democracy: A Report on the Governability of Democracies to the Trilateral Commission*, New York, NY, New York University Press, 1975.
9. R. Rose and G. Peters, *Can Government Go Bankrupt?*, New York, NY, Basic Books, 1978, p. 29.
10. Edward Lucas, 'Eastern Europe: Time to Smarten Up', *The Economist Special Issue: The World in 1998*, 1998, p. 44.
11. *Conversations with Gaidar*, <http://www.globetrotter.berkeley.edu/conversationswithgaidar>.
12. Kim Dae Jung, 'Economic Growth Requires Good Governance', *International Herald Tribune*, 6 February 1999, p. 6.
13. Joseph Kahn, 'Yielding to Asia Crisis', *International Herald Tribune*, 17 February 1998, p. 15.
14. Jane Mansbridge, 'Hard Decisions', *Report from the Institute for Philosophy and Public Policy*, College Park, MD, Winter 1990.
15. *Ibid.*, p. 2.
16. Daniel Yankelovich, *The Magic of Dialogue*, New York, NY, Simon and Schuster, 1999.
17. <http://www.unrisd.org/wsp/publ.htm>
18. *Ibid.*



6

The Rule of Law and Civil Society

Vojislav Stanovčić

The Absence of the Rule of Law Weakens Civil Society

The rule of law is an essential element and a precondition of modern civil society. Modern society is secular, highly differentiated and highly organized; its existence depends on rules which regulate various conflicts and relations between its members and autonomous parts of the society as well as the relations between these autonomous parts and government – that is, state bodies – on the other. Despite the great importance of democracy for the countries which until recently had communist regimes, as well as for some countries outside Eastern Europe and the former Soviet Union, we consider that the rule of law is more important for the functioning of civil society than is democracy. It follows from this assumption that the absence of the rule of law hinders the development of civil society. In the eighteenth century David Hume argued that, if both society and the market were to develop successfully, the rule of law, not democracy, was an absolute necessity. He saw the development of England as consisting of a transition from ‘Anglo-Saxon barbarism’ to ‘regular’ or ‘civilized government’, by which he meant ‘government according to general and uniform laws’.

Experience shows that unless at least the most important elements of civil society are in place there will be little rule of law: society will be dominated by an authoritarian and arbitrary political will. The rule of law, civil society, and democracy are interdependent.

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Paradoxically, but almost inevitably, unless there is a developed civil society in place, the state, guided by a kind of 'etatist' fundamentalism, will determine its own functions. In the nineteenth century, a renowned Russian historian, V. O. Klyuchevsky, wrote that for many centuries the main characteristic of Russian history had been that the state had grown fatter while society had become thinner ('the state swelled up; the people grew lean').¹ This has continued in the post-communist period, in Russia and in all other post-communist societies. There is much evidence, from daily life and from politics, to support the conclusion that in the Federal Republic of Yugoslavia (FRY), as in the other former Yugoslav republics, the etatist model has been strengthened – and that, as a concomitant, civil society has been suppressed.²

We face a vicious circle, and the way out is not in sight. Post-communist societies can be neither democratized nor transformed unless free, open, and autonomous civil societies are established. And this cannot be done simply by decree: it takes time and organized effort; economic – and other – initiatives and enterprises must be free to develop; and those in power must have a favourable attitude to civil society. The last goal is the most difficult to attain: it entails an understanding of the need for civil society by those whose authoritarian positions will be undermined by the development of civil society.

The rule of law is a condition of both a democratic state and a developed civil society. However democratic certain institutions appear to be, if they do not function in the context of the rule of law, then they will not be democratic in the sense that a democratic public understands the term. The premises of the FRY constitution, which determine the nature and to a great extent the institutions of the new Yugoslav federal state, envisage that the FRY is founded on the rule of law.³ The constitution also envisages that laws must be in agreement with the constitution; that the executive and judicial authorities are bound by the law; and that power is divided among legislative, executive and judicial branches.⁴ But some articles make it possible to weaken legality through the law, to prevent appeals being heard in cases where they are provided for by the law, and also to exclude the possibility of litigation in certain areas. Some of these 'exceptions' have been exploited politically.

A constitution can guarantee every right and freedom. In practice, however, these rights and liberties can not only be limited, but also reduced to mere phrases: not only individual rights, but human beings themselves can be ruthlessly violated and crushed.

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The rule of law faces a number of obstacles: absolute power; an underdeveloped democratic political culture; the absence of democratic traditions; the application of the principle in a way that is contrary to its spirit; intolerance caused by ideological or nationalistic blindness; and ignorance of how the principle has been analysed and developed in political and legal philosophy. Of these, absolute power has always been the most significant violator of the principle – regardless of who the bearer of the power is.

One might also ask: is democracy a precondition of the emergence and development of civil society? Some forms of pluralistic democracy have certainly paved the way for the ending of authoritarianism, and thus, under some conditions, for the creation of civil society (civil society is difficult to develop in an authoritarian and etatist framework). Whether or not democracy contributes to the *development* of civil society depends on the kind of democracy in question. That is, even though, in principle, democracy may facilitate the establishment of civil society, it may also be totalitarian: based on populism and therefore similar to those forms of government which have long been denoted by the pejorative label ‘ochlocracy’ (mob rule) (for example, by Aristotle and Hegel).⁵ These ‘corrupted’ forms of democracy hinder the establishment of civil society – and it is precisely these forms that have emerged in the post-communist period, both in the FRY and in some other countries in transition. When Plato criticized democracy for its lack of wisdom – because it chose leaders by lottery – he (with some exaggeration) was indeed describing some traits of democracy, traits which reflect the lack of order in democracy. His description fits those countries in Eastern Europe today that are characterized by the absence of the rule of law. On the other hand, some Asian countries with authoritarian governments have successfully developed some important elements of civil society and some features which resemble the rule of law. Despite these countries’ experiences – many elements of civil society had been developed as part of a process of intensive economic development on the basis of Confucian ethics and undemocratic family traditions – a developed civil society actually requires social pluralism and limited state power: that is, liberal democracy. Wherever elements of civil society have been developed under the rule of authoritarian governments, people have demanded that democratic institutional arrangements be introduced.

The transformation of authoritarian political and social forms into democracy requires a number of interdependent conditions to

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be in place: an autonomous civil society, a democratic political culture, the abolition of political monopolies, the introduction of democratic institutions and procedures, a change in the relationship between society and the state, a high level of protection for human rights and liberties, and private ownership in the economic sphere.

Recently, some commentators have argued that, while the idea of civil society had a role to play in the dissolution of the totalitarian system, it is no longer necessary.⁶ This argument fails to see that a developed civil society is the social basis of democracy and that its development is a long-term process. Most post-communist societies face the emergence of, or already find themselves under the rule of, authoritarian nationalist regimes in which the state is treated as the embodiment of the national spirit. Unless civil society develops, one 'mono-organizational' system will be simply replaced by another – the 'higher interests' of 'class' will be replaced by those of the 'nation'.

There are in the literature several conceptions, or 'models', of the relationship between civil society and the state.⁷ Of the two most mutually opposed models, one – in, for example, Locke and Paine – gives priority to a civil society that democratically elects and controls the government (that is, the state); while the other – in Hegel and many of his followers – gives priority to the state: it assumes that civil society would simply produce chaos, or would not promote national goals. In the post-communist period, many countries have chosen to implement precisely the wrong model.⁸

Great political thinkers, religious reformers and legislators have advocated various normative orders: an order, that is, with some minimum of rules on which to base life in a community. Confucius's golden rule and the teachings of the Buddha and Christ all have the same message: 'Do not do unto others what you don't want others to do unto you.' John Locke, a forebear of modern democratic theory and the founder of modern democratic government, expressed the great idea of the school of natural law with his teaching that men, as beings endowed with reason, can secure peace and live together if they all respect the natural rights to life, body, freedom and property. These are the principles on the basis of which civil society can be developed. In Locke's theory, members of civil society enter into a different relationship with those in whose hands they have placed limited political power: they make those in power responsible to those who elect them, who, by this very act, in turn become citizens. Not only this theory, but all our studies

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and observations, lead us to conclude that without civil society there will be no democracy, and without the rule of law there will be no civil society.

Authoritarian and Liberal Interpretations of the Rule of Law

Law has a contradictory role: it is both an instrument of power and a tool of moderation, a way of limiting power. It is both an expression of political will and an expression of arbitrariness. Power holders enjoy basic legitimacy if their exercise of power is based on rules, even if the government which enacts those rules cannot be considered democratic. From the individual's standpoint as a member of the human community, the existence of such rules answers an apparently deep-rooted human need for order and certainty. Human nature has to be taken into account when the nature of legal rules (laws) is considered. Even at the possible cost of great sacrifice and suffering, man tends to live within ordered relations in which there is some public, or social, authority. Man feels *anomie* if the foundations of his social existence and psychological stability are uprooted.

Whether the orders issued by a political authority, and backed by sufficient force, can be treated as law irrespective of their content is a question that has been debated by ancient, modern and postmodern legal and political philosophers. There are, essentially, two very different views – one liberal, the other authoritarian – on the nature of the rule of law. A liberal conception is that the rule of law does not, as is often assumed, entail a mere implementation of existing laws and constitutions. History, above all that of the twentieth century, has shown that the entire legal system of a country, no matter how internally consistent (or inconsistent) it is, and how effectively (or ineffectively) implemented, does not necessarily have legitimacy, nor will it necessarily be recognized by civilized countries (as an example of this, see the Nazi regime and legal system). If a government issues orders and acts arbitrarily it undermines the principle of law and prevents the emergence of civil society. Arbitrary power might be capable of controlling ethnic tensions and conflicts; but these can explode as soon as the pressure is relieved, that is, as soon as the government tries to democratize itself. The rule of law loses its meaning if law is interpreted only as an expression of the will of ruling circles. In these cases it is the respective will which rules.

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Legal practitioners differ from legal philosophers on this question. The former frequently treat legality in a legal-cum-positivist sense: legality is based on a norm enacted in the name of state sovereignty, and state enforcement of the law is taken as a basic element of the notion of legality. That is an authoritarian conception of the law. This approach has been strongly supported by political thinkers such as Thomas Hobbes; many outstanding theoreticians – from John Austin to Hans Kelsen – advocate such an approach.

The conflict between political will (which, if constrained, develops into arbitrariness), on the one hand, and law or justice, on the other, is a feature of societies through history. Despite the temporary ‘profit’ which the use of force can bring, it appears that, in the final instance, life has proved legal philosophy right in its understanding that the system of legal norms must be underpinned by justice; and that such a system cannot be legitimized by an arbitrary interpretation of justice as the will or the interests of the strongest.⁹

Whatever the importance of and the need for political will in creating the law, one must not forget that the essence of the law is that which makes it the foundation of human civilization: namely, that the rule of law – a framework of impersonal, objective, rational rules – was meant to replace the rule of men (including even of a majority of men) in any community or society. These rules, which assume the existence of human or ethical values, provide freedom within a framework of liberal, permissive norms, and offer due process, that is, a set of procedures according to which laws are enacted and implemented and which provide guarantees against the arbitrary exercise and abuse of power. Attitudes towards the law depend on how adequately it regulates relations between people as well as the movement of goods, services, and ideas, and on the severity of punishments it prescribes. In order to be rational, the law must provide a sufficiently wide framework for ‘legal traffic’.

History teaches us that it is in the nature of political power to enlarge, to concentrate and to improve the instruments of its power. Lord Acton’s aphorism, ‘Power corrupts, and absolute power corrupts absolutely’, is famous.¹⁰ Even without these warnings, the history of communism alone – of Stalinism, Maoism, and Titoism – teaches us a great deal about the use and abuse of power. But a practical conclusion should also be drawn in favour of the rule of law and of the institutional forms which underpin it.

By treating the law primarily as a political tool – and by defining it in terms of the state’s implementation of the law through

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compulsion – legal positivism has denied that the legal order has a meta-legal basis; in so doing, it has reduced the possibility of criticizing the law in axiological terms – that is, in terms that exist outside the law: in some system of values, for example, of ethics, in a political or legal philosophy, or in a theory of natural rights. Criticism of the law then becomes primarily criticism of criteria: (of, for example, consistency – are norms consistent with regard to their place in legal hierarchy? – or of efficiency): that is, it becomes criticism of the conditions for the implementation of laws. This implementation is an important aspect of a legal system, but ultimately it can only be a manifestation of compulsion, of a sufficiently strong political will.

Gustav Radbruch wrote that ‘Legal positivism, which is taught, more or less, at all schools, has accustomed lawyers to accepting all state will in the form of law as the law.’¹¹ He understood that, for a practising lawyer, there is no other law except ‘prescribed’ positive law. But he also argued that the state is obliged to recognize ‘natural law, the same natural law principle which is the only one on which the validity of positive law can be based’.¹² In Radbruch’s view, as well as in the view of others who advocated using meta-legal criteria to evaluate the law, the rule of law ‘obliges’ the legislator, that is, the legislator is bound by the law.

The idea of the rule of law is one of the central topics of legal and political philosophy. The history of constitutionalism as the process of giving form to the basic and highest human laws is the history of efforts by the greatest minds – and defenders of human freedom – to replace the arbitrary rule of men with the rule of objectivized and impersonal rules based on certain reasonable principles. The law is defined, they have argued, not only by the will of the legislator, but also by elements of rationality and by a system of values or justice. Locke, Montesquieu, Kant, Bentham, Hegel, Mill and others advocated the idea that the law must rest on meta-legal foundations; they argued for the need to respect the principles of the rule of law, of freedom within the law, of the recognition of the freedom of others as the limit of one’s own freedom, and of the law as a constraint on power and as the guarantor of freedom.

The idea of the rule of law has become the foundation of the modern theory of constitutionalism, as well as an instrument of struggle against the King’s absolutism. John Locke advocated the view that government and authority are not their own purpose but have as their function the protection of man’s rights and creative

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potential. For Locke, the natural rights that belong to man by virtue of the fact that he is a human being were the basis of, and the reason for establishing, governments. He developed the notion of the school of natural law that men, as beings endowed with reason, can secure peace and mutual tolerance if they all respect natural rights to life, body, freedom and property (that is, rights accepted by reason as being enjoyed equally by all). Positive laws must foster this purpose; in this way the government that adopts these laws can aspire to legitimacy and enjoy obedience. Locke assumed that every authority should be limited by the fact that it must serve the purpose that wise men intended for it, and that nobody, neither individuals nor parliaments, can have unlimited power. This restricts the content of laws: laws cannot be required to do what the political will wants them to do.¹³ This is the opposite of what Rousseau later believed the 'general will' of absolute popular sovereignty should do.

Some frequently advocated principles can be taken as contributions to the elaboration of the idea of the rule of law. These include: *audiatur et altera pars*; *nullum crimen, nulla poena sine lege*; *in dubio pro reo*; the assumption of innocence for the accused; the rule that the burden of proof (*onus probandi*) lies on whoever is making the claim; the rule that laws can not be valid retroactively (*ex post facto* laws); the rule that laws must be promulgated and that a certain period has to elapse before they come into force; the important principles of procedure, as well as respect for vested rights and legal certainties. There are also many rules of material and process law which have been confirmed over time as being suited to the establishment of material truth and justice, but which the political authorities or individual power holders usually break as soon as these rules present an obstacle to the achievement of the power holder's goals.¹⁴ Many of such principles are violated in the Federal Republic of Yugoslavia, for example, despite the fact that they appear in the federal and the republican constitutions.

Those institutional arrangements designed to limit power are, above all, the separation of powers and an independent judiciary, as well as a significant limiting of the power of all relevant institutions – especially those which can give individuals unlimited power. It is not an accident that, in the Brezhnev era, Soviet-inspired ideology praised the institution of the president as the only good institution in the Yugoslav system. Nor is it an accident that all the former communist states (including the former SFRY republics) have introduced presidential systems. Periods of crisis and sudden

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change present many challenges which seem to favour the concentration of power in the hands of one person or of just a few people. But this concentration of power has historically paved the way to a Bonapartist form of rule. And from Caesar to Cromwell, the two Napoleons, Hitler and Mussolini, this type of rule has always been accompanied by strong elements of populism. That is why the separation of powers with its 'checks and balances' may be less 'democratic', but is definitely more suitable for creating conditions favourable to the rule of law. Judicial review also places a limit on democratically elected legislatures. Such limits place some rules above the reach of any individual's will.

Rather than having the law prescribe everything, it is more important that the legal system be rationally ordered so as to enable people to have a favourable framework within which to live. Authoritarian regimes, by their very nature, want to interfere in everything; they want to create rigid and comprehensive legal systems that regulate, in great detail, many aspects of social and human relations. This regulation is enacted usually through 'imperative norms', that is, regulations which must be implemented in a strictly defined manner without regard to the fact that those affected by them might want to reach agreement (establish a contract) in a different way. To use Durkheim's categories, this approach, using repression and criminal sanctions, creates a society mechanically, with the help of external constraints, instead of an 'organic' community based on solidarity, individuality, mutuality, tolerance, and understanding, all within a framework of order comprehensible by the average human mind.¹⁵ If the legal system is restrictive, it leaves little room for the application of 'dispositive norms', or at least of 'alternative norms' – that is, contracts in the classical sense of the term – since the authorities want to be omnipresent. They want to have the right to interfere everywhere: they want to extend their administrative control to books, registers, or data sources, usually those administered by the courts.

As etatism expands and becomes stronger, institutionalized political power tends to treat the law as merely a means of expressing and conveying the will of political power. This is happening in many post-communist countries in a way similar to what happened under communism. But today this approach is being pursued in the name of radical ideologies, of national states, and of other points of view and interests which promote the interests of authoritarian rulers.

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The process of establishing constitutional government, and the process of political institutionalization itself, were actually ways of limiting political power. Over time, the view prevailed (at least in theory) that democracy must be limited by laws, that is, that the power of democracy cannot be based on the momentary will of the majority; nor can the majority realize its interests while disregarding the interests of those who oppose it. Constitutional law was born as an instrument for regulating both the source of political power and the manner in which political authority is exercised, and for guaranteeing individual rights and freedoms (which also limit power).

Both history and contemporary legal theory and practice confirm that the existence of that legal act known as the 'constitution', which claims to enjoy supreme political power, does not guarantee that constitutionality will exist in a legal-philosophical, political and sociological sense. Also the existence of laws does not mean that legality exists, even if these legal rules are being implemented. Indeed, the opposite can also be true: the more legal rules there are, the less legality there is. This is especially so when the rules are an expression of the arbitrary will of the authorities. Individuals with absolute power always pose a threat to democracy, and are an obstacle to the creation of consociational democracy. For this reason, a parliamentary system is more suited to the development of democracy than is a presidential system. Juan Linz has made the same point with respect to the conditions governing the transition from authoritarian rule to democracy. The parliamentary system, in which the legislative body is a relatively adequate reflection of the influential forces in society and in which the moderate and wisest forces of society can influence affairs using the freedom to debate and express differences, makes it possible for all relevant arguments to be taken into consideration, and so, potentially, for the most appropriate decision to be reached.

Since ancient times, reasonable individuals under various kinds of authoritarian regimes have tried to persuade their leaders to pursue more sensible policies. But authority that is too strong does not understand reason. Just as the illiteracy of the emperor was explained by the fact that he was above grammar, so every authority, above all an absolute authority, can, instead of relying on the power of argument, resort to the argument of power.

The rule of law is a prerequisite for establishing and strengthening democratic relations. On the other hand, democracy is, in a way, also a precondition for establishing the rule of law as the

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expression of reason, dialogue, and reflection rather than of force. Democracy, in other words, is a necessary – but not a sufficient – condition for the legitimacy of a regime and for the adoption of good laws. Democracy can be radical (as it would be if Rousseau's concepts were realized) and it can be totalitarian.¹⁶ Since the time of Aristotle it has been taken for granted that democracy is judged in terms of the respect it displays for certain general rules. If it does not respect these rules, it becomes ochlocracy (rule of the mob). Another problem with democracy, one that has been debated from Aristotle to John Stuart Mill, has to do with the so-called tyranny of the majority. Franz Neumann wrote that the voice of the majority cannot make evil into good; but evil, with the support of the majority, becomes an even greater evil.¹⁷ In other words, agreement, participation, mass support and similar forms of acceptance and popularity are merely a necessary, but not a sufficient, condition for the legitimacy of an authority and its laws.

Constitutionalism, as a principle of the rule of law – it implies the separation of powers and a horizontal and vertical dispersal of power, or jurisdiction – is advantageous to the emergence, and is probably a necessary condition of the existence, of civil society. Constitutional rule is, in a sense, always a polyarchy. Its two basic elements are civil society, and a weak (that is, limited) government accountable to society. Civil society and constitutional polyarchy are each conditions of the other. The existence of an independent judiciary is a precondition both of the rule of law and of the existence of a developed civil society. Even though just an institution, an independent judiciary is very hard to establish in conditions which foster authoritarian rule.

A situation often emerges in which what one group or side demands for itself is not granted to others – and vice versa. This undermines the fundamental purpose of the rule of law. Groups and their representatives cannot propose general rules and then demand exemption for themselves, or secretly exempt themselves, from these rules. The rule of law entails the existence of lasting rights and duties, of continuity, as well as of equality of rights and obligations. Frequent changes of rules, and excessive regulation of social relations – which results in reduced autonomy – run counter to this principle.¹⁸

Constitutionally established 'democratic' institutions, as well as guaranteed rights and liberties, including the rights promised to ethnic groups, will not satisfy expectations of democracy if certain preconditions are absent: an autonomous civil society, a democratic

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political culture, the rule of law, the abolition of political monopolies, a modified relationship between the society and the state, and the autonomous role of property in economic life: these and other elements are interdependent. These conditions are mutually dependent; they both cause, and result from, each other as they emerge gradually during the transition processes. Creating these conditions will not just take political will; it will also require many other factors to be in place: a favourable social structure (for example, the emergence of a large and economically significant influential middle class; stable, autonomous and functional social institutions; certain features of economic development), an appropriate educational system, and technical and administrative experts, including lawyers.

The rule of law and democracy may be treated as complementary, as twins developing in parallel to each other. Yet, if the great political thinkers had to choose, they would have advised us that the rule of law is more important than democracy. For democracy without the rule of law – that is, when democracy is not based on constitutional constraints – becomes the expression of the naked will and arbitrariness of the majority, or of those who can easily manipulate it. Government must be restrained, including a government of the people. This is the essential meaning of the rule of law.

The Importance of the Rule of Law for Consoational Democracy¹⁹

In multi-ethnic societies democratic transitions inspired by democratic ideas are far more complex, and develop more slowly, than those in ethnically homogeneous societies.²⁰ It has often been argued that ethnic pluralism hinders the centralization and the concentration of power. This is true, on the whole, but there is not enough evidence available to argue that this kind of pluralism simply facilitates the establishment of democracy. Some studies indicate that, unfortunately, the exact opposite is true: ethnic pluralism hinders the establishment of democracy. Evidence suggests that, in multi-ethnic societies polarized along ethnic and cultural-cum-confessional lines, it is extremely difficult, perhaps impossible, to build either democracy or civil society quickly and easily. The contemporary 'revival of ethnicity' is a complex social phenomenon, the development of which can hardly be checked:²¹ it can easily become the basis of a radical nationalism that has a profound political impact, and it can lead to inter-ethnic conflicts

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with tragic consequences. Even if extremism could be avoided, multiculturalism (multi-ethnicism), as several writers have pointed out, is an obstacle to the *realization* of democracy.²² Increasing attention has been paid recently to John Stuart Mill's assertion that in a country made up of several nationalities it is 'next to impossible' to create the free institutions of representative government.²³

Modern democracy is based on, among other things, the fact that citizens are equal, as well as on the fact that they have individual rights. Democratic principles are often simplified and reduced to the 'rule of the majority' of equal citizens; this equality is expressed through the franchise based on the principle 'one person, one vote'. In situations where some preconditions for democracy are lacking – such as the rule of law, high standards of human rights (and real guarantees that they can be exercised), as well as the appropriate political culture – and where actual relations among ethnic groups are burdened by 'unresolved problems' from the past, it will be very difficult to establish democracy. For it is not easy, nor is it acceptable for particular groups, to base political institutions merely on the equal rights of citizens and on majority rule. Certain ethnic groups (particularly those whose collective consciousness has been shaped by the experience of mass suffering and death) remember that, throughout history, certain groups have dominated others. In such cases it is difficult even to create democratic institutions unless the constitutional principles of democracy are modified according to consociational principles.

In short, the majority rule principle – a keystone of democratic theory and the foundation of the notion of the civic state – in multi-ethnic countries is simply bound to generate tensions, and, very likely, conflicts. Numerous contemporary authors who deal with the problem of the coexistence of ethnic (national, religious) groups – 'consociation' – refer to the tyranny of majority or 'constitutional nationalism'.²⁴ In multi-ethnic or multicultural communities the rule of the majority is easily perverted – or tends, by the minority, to be seen to be so perverted – into the tyranny of the majority. For this reason it is necessary to modify majoritarian democracy with constitutional measures based on forms of group autonomy and collective rights.

The rule of law in such societies is particularly important, though probably even more difficult to achieve than in homogeneous societies. Unless a spirit of tolerance is present, and a democratic political culture, both of which have to be cultivated, the establishment of institutions that in other contexts would be

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called democratic will not produce results that meet democratic expectations. Instead, in such circumstances, 'democratic transformation' may produce relations which are an expression of a new authoritarianism and etatism, here in symbiosis with nationalism. Such regimes become obstacles to civil society: the very idea of civil society irritates them.

Most governments today claim to be democratic; few political parties or movements are likely to say they oppose democracy. But 'democracy' is a vague concept with multiple meanings.²⁵ When ordinary people, unscrupulous politicians, or political scientists use this term they have various conceptions of democracy in mind, various goals that should be attained, and various institutional arrangements. The proclaimed political goals of 'democratic transformation' in the transition states include, for example, the rule of law, free-enterprise economy, guaranteed human rights and liberties, deregulation of the economy, and a reduction in the role of the state.

Despite this conceptual imprecision, there are some political, legal, and institutional factors which, at least in theory, are considered to be necessary components of democracy. However, in order to make a system of political and legal institutions function successfully, certain social conditions must also be in place. One of these is civil society. If certain aspects of civil society are absent, no set of institutions and legal regulations will create 'democracy' on their own. This necessary condition is lacking in the Federal Republic of Yugoslavia – though it is not the only one that is absent – and, with rare exceptions, in other former socialist states, too.

In territories with an ethnic minority, criticism of the majority principle in terms of minority rights often reinforces secessionist tendencies. This process is frequently marked by emotion and irrational behaviour, which in turn can frustrate co-operation among the political élites of various groups. Various authors (including Lijphart) have stressed that such co-operation is an important element of consociational democracy. The role of political élites in the mobilization of ethnic support, and in the struggle for power or domination, must not be overlooked: it is an almost ever-present factor; indeed, of some societies one could say that, in fact, two or more ethnically based societies exist side by side. In such cases ethnic élites may acquire plebiscitarian support: this might resemble democracy but is, in fact, often quite the opposite. In such situations, the opportunities for solving problems through the law are reduced, and instances increase in which 'sovereign political wills', in the shape of their political representatives, come

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into conflict.²⁶ This state of affairs was typical in the former Yugoslavia many years before the country disintegrated.²⁷

The Republic of Serbia, normatively designated as a 'democratic state of the citizens who live in it, based on freedoms and the rights of man and citizens, on the rule of law and social justice',²⁸ with very different situations in its two provinces (Vojvodina and Kosovo), is an excellent example of how important it is to have even an incomplete, yet still developing, civil society, combined with some tradition of the rule of law, even if the latter takes the limited form of a bureaucratic 'Rechtsstaat'. Some of these elements developed in Vojvodina when it was under the rule of Austria and Austro-Hungary – and they left permanent traces. In addition to some elements of civil society, the habit of interpreting the law correctly has taken deeper roots there, among the judiciary and in general; as a result – and perhaps because of the high degree of ethnic diversity in the population – Vojvodina may be seen as an example of successful consociation.

In Kosovo, by contrast, from the Ottoman period to the present – regardless of who has been in power – neither civil society nor aspects of the rule of law have developed. Instead, various models of authoritarian domination have succeeded each other. The periods in which Serbs were forced to leave the region left deep scars, so that later, after the liberation of the region from Ottoman rule early in the last century, and despite the fact that a liberal regime was in place in Serbia as a whole, Kosovo lacked the prerequisites for developing into a multicultural community. One could say it 'developed' on the basis of apartheid, with two groups, two 'communities', living separate lives.

The concept of community has been widely used, and abused, for various purposes. We must thus be critical of this otherwise attractive concept and insist on the concept of society, while acknowledging and accepting the contradictory and conflict-ridden nature of this reality. Only within this framework – one which tolerates a certain level of contradictions – can the freedom of the individual be ensured. In the community, the individual merges into the whole, even if the community is democratic. In Vojvodina, there is more of a society than a community, and in Kosovo at least two separate and opposed (tribal) communities. Civil society is the desirable and, perhaps, feasible functional synthesis in which these two communities, and their members as individuals, will gradually develop – on the basis of certain rational rules – connections with each other to their mutual benefit.

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In this regard commentators often refer to two phenomena: first, the political co-operation between élites of the particular *parts* of a society – as we have seen, Lijphart regards this as an important element of consociational democracy; and, second, the possibility of groups and individuals having a number of politically relevant affiliations across federal or ethnic boundaries; Lipset considers this to be a factor in improving the chances for a stable democracy.²⁹ Developments in contemporary Yugoslavia and in other countries indicate that political élites reserve for themselves the task of mediating among groups, and reduce the opportunities for citizens to establish direct connections; in order to strengthen their own power, they reduce the opportunities for direct co-operation among citizens. Thus, in general, élites – and particularly if they co-operate badly among themselves – prevent social integration among groups. Daniel Elazar has highlighted a process which is noticeable in several countries (and confirmed by the Yugoslav experience): while élites support heterogeneity in the society as a whole, that is, among ethnic groups, they are resolute in imposing homogeneity within the groups under their control.³⁰

Various options are being considered in order to relieve tensions and strife among ethnic groups. Institutional arrangements under consideration include guarantees for individual and some collective rights. (In the literature much more is advocated than the norms of the international law require.) Options often involve various kinds and degrees of autonomy, decentralization, and, with regard to some traditional state functions, the delegation of power to lower levels; self-administration in those spheres (culture, education, health services, for example) where it is feasible; and local minority self-administration in milieux where the minorities are large enough to perform such roles. Various forms of cultural autonomy – broached by Austrian socialists a century ago – are also being considered; as are forms of home rule for minorities modelled on the arrangements existing in Greenland or the South Tyrol; as well as cantonal or regional self-administration after the Swiss or the Spanish models.

The rule of law can facilitate co-operation. It can also appease members of minority groups, and give them some assurance that equal rights obtain for all, which means that, with respect to the law, equal opportunities obtain for all. The rule of law today incorporates the most important achievements of civilization with regard to the protection of human beings, human rights, and institutional and procedural guarantees and rules. Democratic theory also

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demands the appropriate participation of citizens and segments of the society in shaping and adopting laws. But these laws should not simply be expressions of somebody's will, not even the majority's. Minority rights are a correction to the principle of the majority rule. In a sense, the rule of law implies and requires constitutionalism, which limits political power, and regulates the relations between citizens and the government by linking the functions of the latter to the consent of the former. Moreover, the rule of law regulates the development of institutions and the way in which governments are elected and replaced, and how they rule. A valid (that is, legitimate) official title acquired through elections is important; an exercising power with respect for the law is even more so. The support of the majority is, today, merely a necessary, but by no means a sufficient, condition of the legitimacy of government. The political systems of multi-ethnic states should provide means for meeting the basic and reasonable demands of their component ethnic parts.

If a political system is to meet such demands successfully, it must be extremely liberal and tolerant, and satisfy the reasonable demands of ethnic groups about their identity – their language, religion, symbols, and so on. These demands can be met by allowing some form of cultural autonomy. As for the participation of groups in political bodies: the electoral system plays an important role here, as do the constitutional provisions that determine the composition and jurisdiction of – and the way in which decisions are made by – representative bodies. Some of the gravest problems are caused by separatist movements, as these tend to destroy existing states. The overemphasis on the role of the state, and the absolute power it enjoyed over the individual in all spheres of social, and even private, life – not only under communism, but also under earlier regimes – has produced a situation in which members of ethnic groups see the attainment of their own state as the only way to satisfy some of their demands.

In Lieu of a Conclusion

If a civil society is to develop, human beings as individuals must become both economic and political subjects who are part of broader economic and political associations. Each such individual, associating freely with others, must be in the position to create – through his or her knowledge and skills – certain products (goods, services, and artistic creations) which can be exchanged with others

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for what they can offer in return. The starting point, then, is the human right and freedom to offer and receive by exchanging with others. The necessary outcome of this is a complex economic life, and a market which, in sociological terms, is simply the realization of the human skills referred to above. In this context civil law is not only a regulator; it also is a means of replacing the society of status and authoritarianism with a civil society.

Internal democratic associations are also important for civil society. The autonomy of the various segments of the society – particularly the economy, the universities, trade unions, science, press, churches – assumes that these and similar spheres organize themselves into appropriate associations. This corresponds to an associationist conception of society. This requires – further – ‘autonomous law’, and above all the freedom to make contracts, which is indispensable for overcoming a status (and thus authoritarian) society. This autonomy assumes changes in the society–state relationship. The role of the state in relation to these and similar social agencies and sectors must be reduced to creating the most general frameworks in the form of laws regulating the rules of the game. These rules must be obeyed by all players: this ensures that nobody can use their rights and liberties to violate others’ rights and liberties. Pluralism – economic, social, political and cultural – the alpha and omega of civil society, rests on the autonomy of social actors and on the rights and liberties of human beings and citizens.

We live in times and in a setting in which great principles of social justice, equality, freedom, and the rule of law are easily proclaimed. Yet the transformation of the ‘ideological state’ into a state governed by the rule of law remains incomplete; in addition, incomparably worse developments have occurred, which have generated lawlessness. This lawlessness has been spreading on a massive scale; and those breaking laws have taken the ‘law’ into their own hands. The insecurity of life, freedom and property seems not to worry the authorities, who are preoccupied with their own survival. In such circumstances the basic rationale of government (any government) is lost. Certain unpleasant phenomena illustrate well the current condition of the ‘state of law’ in the Federal Republic of Yugoslavia. Every day we see examples of the government’s, and/or the ruling party’s, limiting the autonomy of universities, the media, or of businesses, and placing them under its control; and – according to media reports – crimes are being committed for which nobody is called to account. We are far from creating either civil society or the rule of law.

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Notes

1. V. O. Klyuchevsky, *Kurs Russkoi istoriii* (1937), II, 11 (quoted in Robert C. Tucker, *The Soviet Political Mind*, New York, NY, Frederick A. Praeger, 1963, p.72).

2. See Vukašin Pavlović, 'A Suppressed Civil Society', in this volume.

3. See article 9 of the constitution of the Federal Republic of Yugoslavia and of the constitution of the Republic of Serbia, prepared by Dr Bogoljub Milosavljević and Dr Vladan Kutlešić, Belgrade, *Službeni Glasnik*, 1992.

4. Ibid., article 12.

5. See J. Talmon, *The Origins of the Totalitarian Democracy*, London, 1952. In Aristotle's opinion, the form of democracy in which 'the ultimate power belongs to masses instead of the law ... is caused by demagogues. ... This kind of democracy is what tyranny is among monarchies'. (*Politics*, IV, 3-6, or 1292a); G. W. F. Hegel, *Osnovne crte filozofije prava* (*The Philosophy of Right*), Sarajevo, Veselin Masleša, 1964, sections 257 and 278.

6. See, for example, Robert F. Miller (ed.), *The Development of Civil Society in Communist Systems*, North Sydney, Allen and Unwin, 1992.

7. John Locke, *Dve rasprave o vladi I-II* (*Two Treatises of Government*), Belgrade, Ideje, 1978; G. W. F. Hegel, op. cit.; Ernst Cassirer, *Mit o državi* (*The Myth of the State*), Belgrade, Nolit, 1972; T. Gilby, *Between Community and Society: A Philosophy and Theology of the State*, London/New York, NY, Longmans Green, 1953; Adolf Bibic, *Gradjansko društvo i politička država* (*Civil Society and the Political State*), Zagreb, 1983 (2nd ed.); John Keane (ed.), *Civil Society and the State: New European Perspectives*, London, Verso, 1988.

8. For a thorough consideration of the rule of law and detailed suggestions from a liberal point of view about how to establish a liberal social order which would reduce the coercion of the state and be beneficial to members of the society, see Friedrich von Hayek, *The Constitution of Liberty*, Chicago, IL, Chicago University Press, 1960.

9. Trazimah's view – attributed to him in Plato's *Republic* – is that 'nothing but that which serves the strongest is just'. The notion of force and compulsion, not just as a guarantor of 'validity', but as the very foundation or essential feature of 'the Law', is ever present. Seneca believed (or at least stated) that those who are armed are always right (*lus est in armis*). Bismarck said that might precedes right ('Die Macht geht vor Recht'). Stalin, similarly, stressed Lenin's view that 'The dictatorship of the proletariat is unrestricted by law and based on the violent rule of the proletariat' (J. V. Stalin, *Questions of Leninism*).

10. See Lord Acton, 'Letter to Mendell Creighton', in J. Rufus Fears (ed.), *Essays on Religion, Politics and Morality*, Indianapolis, 1988. Acton writes: 'Great men are always bad men, even when they have influence and authority, and even more when you add the tendency or certainty of

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corruption due to the authority they have.'

11. Gustav Radbruch, Aphorism 1948, *Aphorismen zur Rechtsweisheit*, Göttingen, 1963.

12. Ibid., Aphorism 1932.

13. John Locke, *Two Treatises of Government* (Cambridge University Press, 1960, 1967). According to Locke, 'Law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper interest, and prescribes no farther than is for the general Good of those under the Law ... the end of the law is not to abolish or restrain, but to preserve and enlarge Freedom ... where there is no Law, there is no Freedom. For Liberty is to be free from restraint and violence from others which can not be, where there is no Law' (*Second Treatise*, Ch.VI, para. 57). He required that positive laws must fulfil certain conditions to be considered laws in the true sense. Locke lists some conditions: although legislative power is the highest authority in a country, it 'is not nor can possibly be absolutely Arbitrary over the Lives and Fortunes of the People'; further, it 'cannot assume to itself a power to Rule by extemporary Arbitrary Decrees, but is bound to dispense Justice, and decide the rights of the Subjects by promulgated standing Laws and known Authoris'd Judges' (ibid., Ch. XI, paras. 135 and 136). The Legislature 'cannot transfer the Power of making Laws to any other hands' and is limited (bound) because its authority 'is put in them by the Society, and the Law of God and Nature ... to govern by promulgated establish'd Laws, and not be varied in particular Cases, but to have one Rule for Rich and Poor, for the favourite at Court and the country men at plough'. Also 'Laws ought to be designed for no other end and ultimately but the good of the People' (ibid., paras. 141 and 142).

14. Several works with lasting value have been published in Serbia with the aim of consolidating legality and thus overcoming not only the abuses of power, but also arbitrariness: Radomir Lukić, *Ustavnost i Zakonitost* (*Constitutionality and Legality*), Belgrade, 1966; Miodrag Jovičić, *Zakon i zakonitost život pravnih propisa* (*Law and Legality: The Life of Legal Regulations*), Belgrade, Radnička Štampa, 1977; and Kosta Čavoški, *Pravo kao umece slobode, Oglad a vladavini prava* (*Law as the Art of Freedom*), Belgrade, *Politika i društvo*, 1994.

15. Emile Durkheim, *O podeli društvenog rada* (*On the Division of Social Labour*), Belgrade, Prosveta, 1972, pp. 111–240. The lower, or mechanical, form of solidarity is based on mutual political and legal frameworks which Durkheim analyses in terms of the imposition and implementation of criminal law and administrative punishment. In addition to the outer frameworks, unity here is based on 'organized belief' (which in the twentieth century takes the form of political ideology). The founding of larger and stronger wholes under those conditions calls for organized consciousness in which the collective completely suppresses the individual. This community assumes that people are equal. Higher or organic forms of community imply that people are different. 'The first

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form is possible,' writes Durkheim, 'in the extent to which the individual fits into the collective; the second form is possible only if everyone has their own field of activity, if she or he has a personality' (pp. 160-1).

16. See J. Talmon, *op. cit.*

17. Franz Neumann, *Demokratska i autoritarna država (The Democratic and the Authoritarian State)*, Zagreb, Naprijed, 1974, p. 177.

18. Tacitus, Montesquieu, and de Tocqueville, among others, wrote of the harmful consequences of excessive laws.

19. Consociation is a very old, but not outdated, concept, much used by Johannes Althusius, and recently revived in the sense of 'living together' (in, for example, works by Robert Dahl, A. Lijphart, Pierre van den Berghe, and Daniel Elazar).

20. At present only relatively ethnically homogeneous states in Eastern and Central Europe are being considered for membership of the EU in the near future.

21. See A. D. Smith, *Theories of Nationalism*, New York, NY, Harper and Row, 1971; *Nationalism in the 20th Century*, Oxford, Martin Robertson and Co., 1979; *The Ethnic Revival*, Cambridge, 1981; *State and Nation in the Third World: The Western State and African Nationalism*, New York, NY, St Martin's Press, 1983; and *The Ethnic Origin of Nations*, Blackwell, 1986; A. D. Smith (ed.), *Nationalist Movements*, London, Macmillan Press, 1976.

22. Pierre van den Berghe has studied these problems in Africa and concludes that the prospects for democracy in multi-ethnic societies are directly proportional to the degree of consensus on basic values, and inversely proportional to the degree of cultural pluralism. And where there is the greatest possible cultural pluralism the chances for democracy are seriously reduced. See Pierre L. van den Berghe, *The Ethnic Phenomenon*, New York, NY, and Amsterdam, Elsevier, 1981; 'Pluralism in Africa: A Theoretical Exploration', in Leo Kuper and M. Smith (eds), *Pluralism in Africa*, Berkeley, CA, University of California Press, 1969, pp. 70-7, quoted in A. Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, New Haven, CT, Yale University Press, 1977, pp. 234-6.

23. John Stuart Mill, *Representative Government*, London, J. M. Dent and Sons, 1951, p. 361.

24. See Robert Hayden, 'Constitutional Nationalism in the Former Yugoslav Republics', in *Slavic Review* 51, no. 4, 1992.

25. As Klaus von Beyme has written, there is a strong tendency to treat democracy as a 'synonym for all that is good, beautiful and true in society' (in *Suvremene političke teorije (Die Politischen Theorien der Gegenwart)*, Zagreb, Stvarnost, 1977, p. 199).

26. For treatments of these processes, and of ethnic conflicts, see Milton J. Esman (ed.), *Ethnic Conflict in the Western World*, Ithaca, NY, Cornell University Press, 1977; Robert Levin and Donald Campbell, *Ethnocentrism: Theories of Conflict*, New York, NY, John Wiley and Sons, 1972; Donal L. Horowitz, *Ethnic Groups in Conflict*, Berkeley, CA,

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University of California Press, 1985; William Pfaff, *The Wrath of Nations: Civilisation and the Furies of Nationalism*, New York, NY, London, Simon and Schuster, 1993; Gideon Gottlieb, *Nation against State: A New Approach to Ethnic Conflicts and the Decline of Sovereignty*, New York, NY, Council of Foreign Relations, 1993; Patrick Daniel Moynihan, *Pandaemonium: Ethnicity in International Politics*, New York, NY, Oxford University Press, 1993.

27. In the Federal Republic of Yugoslavia, ethnic groups comprise about one third of the population. In addition to larger groups, such as Albanians (13.9 per cent of Serbia's and 6 per cent of Montenegro's population, according to the 1981 census), and Hungarians (18.9 per cent of the population of Vojvodina or 4.4 per cent of Serbia's population), there are some twenty other groups, including Moslems (13.3 per cent in Montenegro, 3.6 per cent in Kosovo and 2.3 per cent in Serbia as a whole), and Croats (5.3 per cent in Vojvodina, that is, 1.5 per cent in Serbia as a whole). The status of the last two groups changed with the disintegration of the SFRY.

28. The Constitution of the Republic of Serbia (1990), Article 1.

29. S. M. Lipset, *Politički čovek (Political Man)*, Belgrade, Rad, 1969, p. 112.

30. Daniel Blazar, 'Federalism and Consociational Regimes', in *Publius*, vol. 15, no. 2 (Spring, 1985), p. 32: 'The parts themselves tend to be thoroughly hierarchical ... thus, while a coalition regime may be democratic, there are no guarantees that democracy will also prevail within the component parts'.

A Deficit in Legitimacy: The Political Development of the Federal Republic of Yugoslavia

Vladimir Goati

Political Institutions and Constitutions

When Serbia and Montenegro ‘entered’ the Federal Republic of Yugoslavia (FRY) in 1992 they had mutually incompatible political institutions. These institutions had been established in 1990, when the Socialist Federative Republic of Yugoslavia (SFRY) still existed. The constitution of Serbia, adopted on 28 September 1990, gave the president of the republic enormous powers; as a result, Serbia has a ‘semi-presidential’ system. In Montenegro, however, the amended constitution of 1990, and the new constitution adopted on 12 October 1992, gave that republic a parliamentary system. The FRY constitution, adopted in 1992, states that the federal republic has a parliamentary system (similar to that of Montenegro).

Some important provisions of the Serbian constitution (for example, those relating to guarantees of personal liberties or rights, and the liberties of citizens during war) conflict with provisions in the FRY constitution. Even though article 115 of the FRY constitution decrees that republican constitutions be brought into line with it, the constitution of Serbia still does not conform to this constitution. The constitution of Montenegro, by contrast, was adopted after the federal constitution. As a consequence there are only minor differences between these two constitutions.

In the Federal Republic of Yugoslavia several dozen federal laws are in effect which were adopted in the SFRY and conflict

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with the current federal constitution. The deadlines for harmonizing these laws with the FRY constitution were postponed several times (by modifying and amending the Constitutional Law); the deadlines expired in 1995, but these laws have neither been brought into harmony with the constitution, nor have they been abolished.

Since in the FRY two incompatible constitutions are in effect simultaneously (the federal constitution and that of Serbia), as well as a set of laws from the SFRY which conform with neither of these constitutions, the legal system of the FRY cannot be described as a logically ordered and non-contradictory body of mutually dependent norms. Rather, it consists of various norms that 'coexist', the enforcement of which depends on 'meta-legal' factors – and often on the current distribution of power among influential individuals at strategic positions in the federation and the Republic of Serbia.

When democratic institutions were established in Serbia and Montenegro in 1990, this was not as a result of pressure 'from below' (as had been the case in most post-communist countries of South Eastern Europe) but of decisions taken by the ruling communist parties of the two republics. These parties – after having changed their names and altered their programmes – have won all the republican and federal parliamentary elections held to date. Former opposition parties came to power in various coalition arrangements after the republican elections in Serbia in 1997 and in Montenegro in 1998; this marked the beginning of a gradual peaceful change of government in both republics. Nevertheless, this process of peaceful change has not been completed, unlike in all the other countries of the region.

The ex-communist parties of Serbia and Montenegro (the Socialist Party of Serbia [SPS] and the Democratic Party of Socialist Montenegro [DPSM]) have survived in power not only because they enjoy broad support in the electorate, but also because of the unequal conditions under which electoral contests have been held. The SPS and (until the elections of 1998) the DPSM are stronger, in economic, institutional and media terms, than their respective opposition parties: economically, because they 'inherited' a huge amount of property (buildings, cars, businesses) from the communist parties; institutionally, because they can change electoral laws and laws on electoral districts to meet their own interests and without consulting with opposition parties; and, with respect to the media, because the official media 'favour' them much more than they do the opposition parties.¹ For these reasons none of the

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elections in Serbia (and in Montenegro until 1998) can be considered to have been free and fair.

The dominance of the ruling parties over the opposition, however, is evident not just in elections but also – and particularly in Serbia – in political life in general. For example, in 1990 the Serbian constitution was adopted by the one-party parliament elected under the *ancien régime*; there was no consultation with opposition parties. This is why, since 1990, the most important parties in the democratic opposition – the Serbian Renewal Movement (SRM) and the Democratic Party (DP) – have challenged the legitimacy of the Serbian political ‘regime’. In addition – and in contrast to these two parties – the parties of the Albanian minority have denied legitimacy to Serbia and the FRY as ‘political communities’.²

The SPS – in order to maintain its dominant political position – has not refrained from violating laws which it played a key role in formulating. A good illustration of this is what happened, at the constitutive session of the Serbian parliament on 28 January 1993, to the law on electing members of the Chamber of the Republics of the Federal Assembly. The existing law had been based on the principle that each party represented in the Serbian parliament had the right to be proportionally represented among the 20 members elected by the Serbian parliament to the Chamber of the Republics. At that session, however, the SPS, without notice and assisted by the ultra-nationalistic Serbian Radical Party (SRP), changed the law to abolish this principle of proportional representation.

Subsequently – on the same day and at the same session – the Serbian parliament elected to the Chamber of the Republics only members of the SPS and the SRP. By doing this the parliament breached a legal obligation, namely, that a law cannot come into effect until it has been published in the *Official Gazette of Serbia*. Even more serious was that this decision violated a fundamental legal principle, namely, that laws cannot be enforced retroactively (the changes in the law concerned matters that had been settled by the December 1992 elections).

The Serbian opposition has not resigned itself to having a marginal political position: it has tried to force the ruling party to make concessions. Opposition parties have left sessions of parliament, boycotted elections, and organized mass demonstrations. The longest demonstrations – from mid-November 1996 to early February 1997 – were provoked by the regime’s attempt to prevent the opposition from taking power in municipalities and cities where the opposition had won majorities in the 1996 local elections (the

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'big electoral fraud'). The regime was forced to yield and to allow the opposition to take power where it had won. Other election boycotts, however, have been less successful: for example, the boycott, by 12 opposition parties, of the 1997 elections for the Serbian parliament. (This failure was largely the result of the Serbian Renewal Movement not joining the boycott: it participated in the elections.)

The 1997 elections were boycotted by, among other parties, the Democratic Party (DP) and the Democratic Party of Serbia (DPS), which in the preceding republican elections (1993) had together won one-sixth (16.7 per cent) of the votes. If we note that, in the 1997 elections, Albanians, who make up one-sixth of Serbia's population, did not vote (as in all preceding elections), then it is not an exaggeration to conclude that the 1997 elections produced an unrepresentative, rump parliament. The views of important opposition parties on the dramatic problems facing Serbia since 1997 have been absent from this parliament. Some parties in the democratic opposition, for example, advocated a compromise solution of the Kosovo crisis that would have averted the Federal Republic's military conflict with NATO in 1999. Since they were not represented in the Serbian parliament, the democratic opposition parties organized mass protests; these began on 21 September 1999 in 18 Serbian cities, and had as their goal the resignation of Slobodan Milošević and the holding of (for the first time) fair elections.

While undemocratic elections were a feature of Serbia's political landscape between 1990 and 1999, the elections held in Montenegro on 31 May 1998 were basically democratic. The monitoring missions of the Organization of Security and Co-operation in Europe (OSCE) and the European Bureau for Democratic Institutions and Human Rights judged that

*'... Parliamentary elections ... were well organized and are a significant improvement compared to previous elections held in Montenegro. These elections are a step forward in the direction of fulfilling the conditions which are OSCE's basic commitments. The Monitoring Mission has the pleasure to state that most recommendations directed by the Monitoring Mission in 1997 as well as by the technical assistance team since February 1998 were put into practice.'*³³

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A significant aspect of the FRY's political development has been that important political forces have explicitly challenged the legitimacy of Serbia and the FRY as 'political communities' and/or the legitimacy of their political regimes.⁴ The parties of the Albanian national minority gathered together in the 'Albanian alternative' have called into question Serbia and the FRY as 'political communities'. Like the Albanian parties in Kosovo, the Party of Democratic Action (PDA), unhappy with the marginalization of Muslims ('Bosniaks') in Serbia (2.5 per cent of the population), also boycotted republican and federal elections in 1992 and, in 1993, republican elections. The refusal of an ethnically defined segment of the electorate that comprises almost one-fifth of Serbia's population to participate in political life indicates that both Serbia and the FRY suffer from a pronounced deficit of legitimacy. Montenegro has also had to deal with an ethnic boycott, albeit a weaker one: again unhappy with the position of Muslims (14.6 per cent of the republic's population), the PDA refused to participate in the December 1992 federal elections. It did, however, participate in the republican elections, held at the same time, as well as in all later elections.

The major opposition parties in Serbia (SRM, DP and DPS) have denied the legitimacy of the political regimes (that is, the constitutional orders) established in Serbia and the FRY in 1990 and 1992, but without challenging Serbia and the FRY as 'political communities'. Their negative attitude toward the republican and federal political regimes is a consequence of their being excluded from crucial decision making (about the constitution and the electoral law) in the formative phase of the new democratic order. The decisions to exclude them were made in both republics in 1990 by one-party parliaments, before the elections; and in Serbia the decisions were not preceded by any consultation with the opposition. Opposition parties in both republics were also excluded from the decision-making process that led to the establishment of the FRY.

This exclusion of the opposition contrasts with the practice in most other post-communist countries of South Eastern Europe, where constitutions (or amendments to them) and key political laws – above all electoral laws – were adopted on the basis of a consensus reached between the government and the opposition at 'round tables'. The systematic marginalization of the opposition has left an indelible mark on the party system of Serbia; this has manifested itself in the huge ideological 'gap' and in the strong animosities between the political parties concerned. One could, as a result,

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classify the established party system of Serbia as 'polarized pluralism'.⁵ Since political conflicts in Montenegro have not been so bitter and intense, and the 'ideological distance' between parties is not as great as in Serbia, the party system of Montenegro could be classified as one of 'moderate pluralism'.

Despite the significant political differences between Serbia and Montenegro, the FRY functioned without any difficulty until 1997. This was the result of a solid consensus between the ruling parties of Serbia and Montenegro: they solved all problems in the federation by making political 'deals'. This state of affairs changed at the beginning of 1997 when the Montenegrin DPSM split into two factions. The majority faction was broadly social-democratic; the other broadly neo-communist. The latter faction left the DPSM and formed a new party, the Socialist People's Party of Montenegro (SPPM). During the conflict within the DPSM, in July 1997, Momir Bulatović was removed as party president and Milo Djukanović, whose stance was strongly pro-democratic and critical of Slobodan Milošević's regime in Serbia, was elected as party leader. In October 1997 Milo Djukanović defeated Momir Bulatović in the Montenegrin presidential elections, even though Bulatović had enjoyed strong media and material support from Serbia. Djukanović's victory was complemented by the triumph in the republican parliamentary elections of 31 May 1998 of the pro-democratic and pro-European coalition 'For a Better Life' (DPSM; People's Party; Social Democratic Party) over the SPPM.

The regime in Serbia did not, however, accept the turn towards democracy in Montenegro. In the ensuing political conflict with Montenegro the Serbian regime has deployed a range of pressures that violate both the federal constitution and many laws. These include preventing the MPs legally elected by the Montenegrin parliament in 1998 from taking up their posts in the Chamber of the Republics of the Federal Assembly (and, instead, bringing into the chamber MPs elected in 1996); appointing Momir Bulatović prime minister of the federal government against the opposition of the Montenegrin parliament; and blocking goods traffic between the two republics (above all, the traffic of agricultural products from Serbia to Montenegro). The latter measure echoes the 'economic blockade' imposed by Serbia on Slovenia in the Socialist Federative Republic of Yugoslavia in late 1989. The Serbian regime's reason for preventing the Montenegrin MPs from working in the Chamber of the Republics (where, like Serbia, Montenegro has 20 members) is that it wants to create a majority in the chamber

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for the Serbian ruling coalition. In addition, the Serbian ruling coalition has, with 108 votes to Montenegro's 30, an overwhelming majority in the other chamber of the federal parliament, the Chamber of Citizens. In this way – in violation of the principle of equality between republics proclaimed in Article 1 of the FRY constitution – Montenegro has been marginalized both in the federal assembly and in the federal government, as well as in all other federal institutions. Having thus lost the opportunity to influence the make-up of federal organs constitutionally, Montenegro has refused to enforce the decisions of the federal government.

At the beginning of 1999 Montenegro tried unsuccessfully to avert the confrontation between the FRY and NATO. The Montenegrin assembly, the president, and the government insisted, on several occasions, on the need to accept the Rambouillet agreement on the peaceful management of the crisis in Kosovo with the participation of the international community; the Serbian parliament, however, rejected the agreement. Towards the same end, in mid-March 1999 the Montenegrin parliament adopted a resolution which demanded that Montenegrin army reservists drafted into the Yugoslav army be returned to Montenegro, and called upon the appropriate organs of the republic to make sure that, were a conflict with NATO to break out, the Yugoslav army should not be allowed to use the territory of Montenegro. When the NATO attacks on the FRY began, the Montenegrin government issued a decree (on 26 March) rejecting the decision of the federal government to declare a state of war. On 1 May the Montenegrin government demanded that Montenegro be exempted from the international petrol embargo, promising that the petrol it imported would not be used by the Yugoslav army. On the basis of all this, we may conclude that the FRY is a federal state only in a metaphorical sense.

Notes

1. Vladimir Goati, *Izbori u SRJ od 1990 do 1999, Volja gradjana ili izborna manipulacija*, Belgrade, CESID, 1999.
2. On the difference between 'political community' and regime, see D. Easton, *A Systems Analysis of Political Life*, Chicago, IL, London, University of Chicago Press, 1979, p. 143.
3. 'Parliamentary Elections of 1998', *Official Gazette of the Republic of Montenegro*, 1998, p. 109.
4. On 'regimes' and 'political communities', see footnote 2.
5. Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis*, Cambridge, Cambridge University Press, 1976, p. 131.



8

Reconciliation through Constitutional Consent: The Case of Serbia

Slobodan Samardžić

Communist regimes frequently invoked an ‘internal enemy’. This was an integral – indeed, an ideologically central – aspect of their government. The rational reason for summoning up an ‘internal enemy’ was not only that, by producing real enemies, it created the conditions for a permanent state of emergency, but also that it concealed real contradictions in society, contradictions that fundamentally challenged the ideological image of the system which the regime wanted to project. One of these contradictions – typical in multi-ethnic communist states – was the tension between, on the one hand, the aspirations of different ethnic communities to build their own national states and, on the other, the ethnic heterogeneity of the state concerned.

Communist societies failed to establish generally accepted constitutional arrangements adequate to the demands generated by their heterogeneous ethnic composition. They failed to understand what the constitutional preconditions were for solving internal problems because, in general, they rejected the spirit of constitutionality contained in guarantees of basic rights and freedoms and the limitation of political power. Instead, they offered, as a way of dealing with any societal problem, *ad hoc* solutions based on their own arbitrary estimations of causes, consequences, and of the actors involved. The dissolution of Yugoslavia demonstrated that such an approach was powerless when faced with a deep historical problem such as internal ethnic disputes.

After the bloody mutual separation of Yugoslavia’s constituent nations, the question of reconciliation became an issue in the

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relations *between* the successor states. However, inter-ethnic conflict also remained an issue *within* Serbia and Montenegro, as well as within the federation consisting of Serbia and Montenegro – the Federal Republic of Yugoslavia (FRY) – created in 1992. These nation-states retained their heterogeneous ethnic structures and inherited from the old federation the linked problems of ethnic conflict and reconciliation.

This chapter addresses the problem of achieving reconciliation on the basis of constitutional consent. Today in Serbia, as under the old communist regime, the constitution is treated merely as an instrument of power. However, it should instead be seen as the permanent foundation of the state: a constitution establishes a state as a lasting political community, the inhabitants of which accept the principles, norms and institutions of the constitution.

One should add that this formal definition of a constitution does not mean much unless we examine the concrete conditions in which it is applied. The Federal Republic of Yugoslavia today is an exceptionally disorderly and chaotic state with an authoritarian political system, an apathetic and passive population, disloyal minorities, laws that are applied unpredictably, and a poor international reputation. It is necessary to determine not only which constitutional arrangements would contribute to its democratization, but also how constitutional policy would help achieve reconciliation through constitutional consent.

This problem is far more complex, conceptually and in practice, than in most of the East-Central European states that have set out on the road to post-communist constitutionality. There are several reasons why the conditions for the democratic constitutional transformation of Serbia, Montenegro and the FRY are less favourable than the conditions in these states: the collapse of the former federal state (the Socialist Federative Republic of Yugoslavia: SFRY) amid inter-ethnic rivalry and war; the personal continuity of the present authorities with those of the old order; the lack of a serious alternative strategy for the democratic transformation of the state; the secessionist policies of Serbia's biggest national minority, the Albanians; and international economic and political isolation.

An alternative constitutional policy in Serbia, Montenegro, and the FRY would have to proceed from completely different premises to those adopted by authors of the present constitution. It would have to take the constitution seriously, namely, as the foundation of a democratic polity (though in a situation in which the preconditions for the founding of a democratic state do not exist, the

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creation of this foundation must be seen as a process in which political life is 'constitutionalized'). But not only would an alternative constitutional policy have to start from different conceptual premises; it would also have to deal with quite different constitutional problems to those which the authors of the current constitution have addressed and are trying to resolve.

The fundamental, and most far-reaching, problem is that of 'constitution-making power', or 'constituting power', and, as a corollary, constitutional legitimacy. In modern constitutional theory, the power to make a constitution is concentrated in the political body of the community.¹ It is normal that the bearers of this power should be 'the people' – politically active citizens – which is why the power concentrated in its hands has a residual character. If the idea central to most constitutions – 'all power stems from the people' – is to have full expression in a constitution, that constitution must be the genuine product of the constitution-making activities of the highest legitimate representatives of the people. In other words, it must enjoy the consent of all interested parts of society, and this consent must be based on a consensus about the basic principles, norms and institutions contained in the constitution.

This did not pose a problem for the authors of the Serbian and Montenegrin constitutions. They simply assumed that 'the people', as the bearers of constituting power, already existed politically and that, as a result, the people's consent to a constitution formulated by political experts was given. In each case, the procedure for achieving agreement on the constitutional form of the state consisted of no more than a vote about a constitution that had already been prepared. However, the legitimacy and representativeness of the parliaments in which these votes were taken was questionable. The procedural ease with which the Serbian and Montenegrin constitutions were adopted hid the fact that 'constituting power' was, in reality, the exclusive possession of a narrow party élite. Regardless of the content and meaning of the constitutions, these constitutions could not provide two basic constitutional goals: guarantees of basic rights and freedoms and limitation of political power.

However, the problem of constituting power in Serbia and Montenegro cannot be reduced to a matter of absolutist usurpation; an absolutist government can have popular support which gives it 'legitimacy' ('caesarism'), or it can exploit internal and external threats to the state, war or other conflicts, or international

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isolation. All of these are, in fact, recognizable features of the constitutional situation in Serbia and Montenegro.

A change in the Serbian constitution involving the participation of the legitimate representatives of all important political groups would not only require the summoning of a democratic constituent assembly. The basic problem in Serbia today is how to create the conditions for the necessary constitutional consensus. This is virtually impossible given the sharp political and ethnic divisions among political actors and within the population itself. The notion of constituting power is therefore an abstraction, which hides the fundamental impossibility of reaching an elementary consensus about the type of state to be created, how it would be organized, and even where its borders should lie.

The basic precondition for achieving a consensus about these fundamental matters is the mutual recognition of ethnic groups as the bearers of legitimate political will. The most favourable context for achieving such mutual recognition is precisely a debate about a new democratic constitution.²

The central problem in Serbia is the relationship between the Serb majority and a number of ethnic minorities. These minorities have varying degrees of loyalty to the state. The largest minority, the Albanians, who are concentrated in Kosovo, express complete disloyalty to the state and support the secessionist strategy of their political leaders. Muslims, who have recently started to call themselves Bosniaks, are concentrated in the Raška region (the Serbian part of Sandžak). Their attitude towards the state is ambivalent and their loyalty could be described as very conditional. Hungarians are concentrated in northern Vojvodina. Their attitude towards the state is generally loyal, although they have expressed clear demands for the protection of their minority rights. Smaller minorities – for example, the Romanians, Bulgarians, Slovaks, Romanies, and Turks – express complete loyalty towards Serbia. Given the political tensions among the many ethnic groups, it would be difficult for a discussion about the constitution as a problem that affected them all to develop. Indeed, this would be impossible without mutual political recognition between the majority and the minorities.

However, recognition is only the first step: formal respect is insufficient, as no consensus can be implemented in an empty political space. Although all modern constitutional revolutions have expressed universal values and norms (based, for example, on the abstract citizen as a political protagonist) they have also taken into

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account concrete historical conditions such as political and cultural traditions, historically acquired rights and so on. This must be, *mutatis mutandis*, the case in Serbia with regard to the relations between majority and minorities.

A just mutual recognition would therefore include the following elements: the majority must give minorities a say in the making of the constitution; as a result their generally recognized collective rights would be incorporated in and protected by the constitution. In return, the minorities should not question the historical legacy of Serbia as the national state of the Serbian people; in this way they would show respect for the historical continuity of the state. Only in a context of such mutual consent would it be legitimate to demand that the majority renounce its majoritarian power during the constitution-making process. Such a renunciation is essential if a reliable constitutional basis is to be established (bearing in mind Locke's assertion that an original compact is never the result of majoritarian decision making).³ In the modern age, above all – characterized as it is by the political pluralism of heterogeneous societies – the concept of the people as an *a priori* unified constituting power can no longer be historically justified.⁴

The mutual recognition of the majority and ethnic minorities would make it possible to constitute Serbia as a heterogeneous nation-state; given its multi-ethnic composition, this would be the most suitable constitutional form for the state. On the one hand, it would reflect Serbia's modern historical sense as the national state of the Serbian people; on the other, ethnic minorities would be able to accept Serbia as their state – one in which they enjoyed, in addition to basic human rights and equality with other citizens, collective rights and state protection of the minority status.⁵ Naturally, all these provisions would have to be contained in a constitution, in the drafting of which representatives of the ethnic minorities took part.⁶

The constitutional rationale of the concept of a heterogeneous nation-state lies in the establishment of a democratic balance between the majority and minorities. If constitutionalism cannot be identified as the democratic rule of the majority, it certainly cannot work against the interest of the majority – provided there are constitutional limitations. This means that the majority cannot violate constitutionally guaranteed rights: in this case the rights given to national minorities in return for which they have accepted the state as their own and agreed to participate in its political life. All national minorities in Serbia apart from the Romanies have

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their own national states outside Serbia and the FRY; this means that their legitimate demand to take part in state affairs in Serbia should not go so far as to threaten the state-making character of the Serbian nation.

The democratic potential of the nation-state is not yet exhausted. The nation-state has not been replaced by a more democratic form of political community, either in Europe or elsewhere. According to one convinced European, Ralf Dahrendorf, the nation-state is still the most secure space within which civil rights can be formulated and protected.⁷ This is why, after the collapse of the communist system, and above all of the multi-ethnic communist federations, nation-states were regarded as a reflection of the idea of national emancipation and as the most realistic framework for the democratic transformation of society.⁸ Like Serbia, most of the countries of Central and Eastern Europe are ethnically heterogeneous.⁹ However, not one of these states has adopted the constitutional concept of a multi-ethnic state. All are nation-states with more or less developed constitutional and legal safeguards for minorities. Even if a state has a heterogeneous ethnic composition, the concept 'nation-state' is not in principle an obstacle to constituting the state democratically, provided both that minority rights are guaranteed by constitutional provisions on human and minority rights and that the possibility exists for minorities to seek international protection where these provisions are not adequately applied.

The constitutional concept of a heterogeneous nation-state goes one step further. It requires the participation of minorities or their representatives in the process of formulating the constitution; this will ensure their full support for and approval of its basic principles and institutions. In Serbia, this would provide – with respect to Serbia's minorities – a proper solution to the question of constitutional legitimacy.

However, this does not fully solve the problem of constitution-making power or constitutional legitimacy in Serbia. Although the political division between the majority and the minorities is very deep, it is not the only cleavage. Reducing the problem of legitimacy and consent to one of inter-ethnic relations would not significantly enhance the democratic nature of the constitution. This has not happened even in multi-ethnic federations such as Switzerland and Belgium. These federations have created liberal constitutions by limiting the role of the ethnic community or territorial community (canton) in the constitutional structure of the state (federation).¹⁰ The political role of the individual citizen is

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constitutionally balanced with the role of the ethnic-cultural group or territorial unit within the framework of a specific consensus philosophy. This is particularly evident in the Swiss federation.

For Serbia to become a constitutional democracy, the political will of its citizens must find full expression in the procedure for adopting the constitution. A new, constitutional policy in Serbia is unimaginable without the equal participation in such a procedure of all relevant political actors and all legitimate representatives of society. Only in this context can the nation evolve from a cultural and ethnic entity into a 'political people' capable of debating and reaching agreement on the general rules of political behaviour. Modern constitutional institutions such as basic rights and freedoms, the separation of powers, an independent judiciary, and constitutionality and legality, have constitutional meaning and usefulness only if they are based on the consensual will of the citizens as individuals and not only as members of particular collectives. In Serbia there is no better way to formulate and express that will than to open a constitutional debate on the form, and the political future, of the state. Since this is a problem for all citizens of Serbia, the participants in this discussion can be individual citizens. These – in contrast to obedient subjects defined in terms of ethnic origin – are individuals whose active political commitment is the guarantee of their supreme interest in the community: namely, that their rights and freedoms be preserved and that there are firm controls on government.

The process of changing the unconstitutional situation in Serbia does not have to begin with amending the constitution. The most constitutionally relevant change would be for the citizenry to develop into the potential bearer of constitution-making power and to become a competent protagonist in public debate.¹¹ The procedure for making constitutional changes, and the form such changes took, would be a result of choices made by those involved, the realistic possibilities that exist, and of the clear need to break out of the current situation. For the political landscape of Serbia today is characterized not only by ethnic division, but also by a deep division between the different political strategies for its economic and social development.

Starting from these premises of constitutional consent there are two basic constitutional principles which require both inter-ethnic and civil consent: basic rights and freedoms; and the organization of government.

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Basic rights and freedoms, including the rights and the protection of minorities, must be guaranteed by the constitution; they may not be limited by subsequent legislation. Constitutional changes would have to make clear the distinction between the previous, communist and the current, post-communist constitutions.¹² There are two important priorities here: first, the provisions of the constitution dealing with rights and freedoms must be clear and unconditional: this will prevent official bodies interpreting arbitrarily and abusing these provisions; and, secondly, since society has not freed itself from its absolutist fetters, the constitution must include both an explicit ban on the monopolization of power by one party and guarantees of freedom of thought, assembly and expression.¹³

Without an independent judiciary, basic rights and freedoms, including the rights and the protection of minorities, will remain a dead letter. The guarantees of judicial protection contained in the present Serbian constitution (article 12, paragraph 4) have little practical effect. Whether or not the judiciary is genuinely independent depends on the separation of powers. In addition to this principle, it is necessary to ensure that the judiciary's independence is properly guaranteed by the constitution; the current Serbian constitution does not do this.¹⁴

Finally, with respect both to basic rights and to the problem, discussed above, of the legitimacy of the constitution, the special rights of national minorities (positive discrimination rights) should be included as a separate chapter in the section on constitutional guarantees of basic rights and freedoms. The constitution of Montenegro, which has similar minority problems and solves them with a special section on minority rights, could be taken as a model.¹⁵

The *organization of government* in Serbia can reflect the principle of the separation of power only if constitution-making power is in the hands of the people as a result of their consenting will, that is, only if the procedure by which the constitution is made is democratic. Otherwise, the constitution can contain this principle (as in article 9 of the Serbian constitution) and define concrete institutional arrangements for implementing it, but effective power will remain concentrated in only one part of the constitution (for example, as until recently in Serbia, in the office of the republican president) and will, therefore, be extremely unbalanced.

Equally important for the organization of government in Serbia is how power is distributed in it both 'horizontally' and 'vertically'.

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In horizontal terms, the present constitution has created a semi-presidential system to compensate for a weak parliament and a generally unstable government. In this respect, Serbia does not, formally, differ much from most of the post-communist countries of East-Central Europe.¹⁶ What does make Serbia different from these countries is that the president relies heavily on one political party and that, as a consequence, party leadership becomes state leadership. This creates a ruling fusion of the parliament, the government and the head of state, which often acts outside the constitution. This fusion of power, in the form of an all-powerful party and its leader, existed before the constitution was adopted; it tailored the constitution to its own needs and simply moved into the new institutions. It continues to function even now, when the strong party chief is no longer president of Serbia, but president of Yugoslavia.

In these conditions the principle of the separation and limitation of powers is out of the question. The promotion of this principle in a new constitution would require the introduction of a parliamentary system in which the government was answerable to, and the president was elected by, parliament. Even when one party had a clear parliamentary majority, which is no longer the case in Serbia, a president chosen from its ranks would not have the same room for manoeuvre as a directly elected president, and therefore would not have the same exceptionally wide prerogatives.

In terms of the vertical distribution of power, Serbia should become a regionalized state. In place of its (currently non-functioning) asymmetric structure (Serbia has two autonomous provinces, Vojvodina and Kosovo) Serbia should have a regional structure in which the regions would have a considerable degree of territorial autonomy as well as influence on the central government.¹⁷ This would make the modern democratic principle of autonomy universal; at the same time, regionally concentrated minorities would have special privileges because, within the system of regional government, they would be able to administer directly matters of special interest to them.

One of the consequences of the introduction of a regional system in Serbia would be a bicameral parliament with a chamber of citizens and a chamber of regions. We will not discuss here the precise distribution of constitutional competencies between these chambers, but regionalization would clearly contribute significantly to the decentralization of power and give it a more pluralistic and polycentric character. Serbia would be organized as

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a heterogeneous nation-state with a democratic and decentralized government.

The constitutional changes for Serbia, proposed above, represent a set of normative, political and institutional arrangements aimed at bringing about internal reconciliation and lasting peace in a country marked by deep conflicts and diverse latent and manifest hostilities. To a realist they would appear too normative and politically irrelevant. However, no lasting political solution to Serbia's problems, based on reconciliation, is possible without these normative premises. A 'realistic' approach to Serbia's constitutional framework lacks the dimension of reconciliation.

There are two such 'realistic' approaches. One envisages retaining the constitutional status quo, marked as it is by the satisfaction of Serbia's rulers with the existing constitution and their blocking of any constitutional reforms. They do not feel this satisfaction because they are constitutional conservatives or because they insist on maintaining the existing constitution. They do so, rather, because the constitution provides a smokescreen behind which they can continue to enact their policies. However, the consequences of this situation continuing will be serious for both Serbia and the Yugoslav federation. Serbia will remain an absolutist state, and one that, possibly, lacks the populist support which it enjoyed at the beginning of the 1990s. The catastrophic effect this would have on Serbia's overall development would be evident most visibly in Serbia's lagging behind its Balkan neighbours economically, culturally, and in all other spheres. Retaining the constitutional status quo would mean that the deep internal divisions in ethnic, social, economic and – last but not least – federal relations would continue.

Another, equally unfavourable, constitutional scenario entails the external intervention by the international community in the constitutional system of Serbia and the federation. The idea of giving special status to regions with large ethnic minorities, primarily Kosovo, but also Vojvodina and Sandžak (as suggested at the Hague Peace Conference on Yugoslavia in November 1991), or the explicit proposals that Kosovo should become a third federal unit, would signify the territorial partition of Serbia, disturb the federal relationship with Montenegro, and make the Serb national question into a permanent political issue. This would be the surest way of making the ethnification of politics the basis for resolving constitutional problems in Serbia and the Federal Republic of Yugoslavia; it would, therefore, render any kind of constitutional solution to

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these problems impossible. Like the previous approach, this constitutional scenario would consolidate absolutist power in Serbia: it would do so by enabling the authorities to use the permanent fear of external threats to secure open or tacit populist support from a politically homogenized people. In these circumstances, the issue of internal reconciliation would be superfluous.

Notes

1. 'It is clear that some other form of authority, power, united and indivisible, must stand behind the powers which have to be separated. This is the authority or power to draft and adopt a constitution, the so-called constituting power, the power to establish the constitutional order and, when necessary, to amend, supplement and even replace it with a new constitution' (Karl J. Friedrich, *Konstitucionalizm – orgraničenje i kontrola vlasti*, Podgorica, CID, 1996, p. 35).

2. In their introduction to *Constitutional Prerequisites for a Democratic Serbia*, the authors correctly state that '[f]raming the constitution in this situation represents an indispensable channel for meaningful definition of a basic democratic consensus of the new political community' (Lidija Basta (ed.) *Constitutional Prerequisites for a Democratic Serbia*, Fribourg, Institut du Fédéralisme, 1998, p.7).

3. John Locke, *Dve rasprave o vladi (Two Treatises of Government)*, vol. II, Belgrade, Mladost, 1978, pp. 57, 58.

4. See Jon Elster, 'Die Schaffung von Verfassungen – Analyse der allgemeinen Grundlagen', in Ulrich K. Preuss (ed.), *Zum Begriff der Verfassung*, Frankfurt/Main, Fischer Taschenbuch Verlag, 1994, p. 40.

5. The refusal of Kosovo Albanians to accept their minority status is linked to the secessionist policy of their political leaders. It is not only the term 'ethnic minority' which upsets Albanians. (This term, which is normal in European state law, could be replaced by any other, for example, 'national group' or 'ethnic group'.) The problem is not terminological and semantic but political: Albanians want to be a 'political people', that is, a nation with the right to form its own national state in Kosovo. This strategy affects territorial disputes and goes far beyond the limits of our view of reconciliation in Serbia through constitutional consent.

6. The concept of Serbia as a heterogeneous nation-state should be incorporated in all parts of the constitution, from the provisions on basic rights to provisions on the organization of government. The preamble should clearly define the state in the following terms: 'Serbia is the national state of the Serbian people, the state of all national minorities (or ethnic groups) who live in it and the state of all its citizens.' The current Serbian constitution is less clear because, in the preamble, it describes Serbia as 'the democratic state of the Serbian people in which members of other nations and national minorities will be able to exercise their national rights'. On the

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other hand, the concept of Serbia as a constitutionally multi-ethnic state, proposed in the project *Constitutional Prerequisites for a Democratic Serbia* (op. cit., pp. 8–9 and 13–14), ignores the historical fact that modern Serbia originated and has developed as a national state of the Serbian people. On the basis of a criticism of the ethno-democratic character of the current constitution, the project starts from an inter-ethnic constitutional consensus as the basis for constituting a multi-ethnic state of equal nations and citizens. The main weakness of this proposal is its disregard for history, evident in the way it reduces the Serbs to the status of an ethnic group in their own state. This leads to an ethnification of the constitutional question: Serbia, in the words of the report, should be the legitimate state of ‘citizens of all ethnic communities living in it’ (p. 8). The gulf between constitutional multi-ethnicity and the hypostasized political subjectivity of the individual citizen therefore remains conceptually unclear.

7. ‘The national monopoly of power is a precondition for the validity (the harmonization and implementation) of civil rights’ (Ralf Dahrendorf, ‘Die Zukunft des Nationalstaates’, *Merkur*, nos. 9–10, 1994, pp. 751 ff). The expression ‘the heterogeneous nation-state’ used in this chapter is taken from this article.

8. ‘The new political trends in Eastern Europe have been designated as [moving] towards the nation-state, and this was also the basic reason for the collapse of multi-national states, like the Soviet Union or Yugoslavia’ (Georg Brunner, *Nationality Problems and Minority Conflicts in Eastern Europe*, Guetersloh, Bertelsmann Foundation Publishers, 1996, p. 13).

9. Brunner divides the countries into three groups depending on the share of minorities in the total population. He describes states in which minorities make up less than 10 per cent of the population as nationally homogeneous; only six of the 41 states in this region satisfy this requirement. States in which minorities account for between 10 and 50 per cent of the population are described as states ‘with different nationalities’. These account for the overwhelming majority (33) of the region’s states, including Serbia – where minorities account for 29 per cent of the population – and Montenegro (26 per cent). States in which the biggest ethnic group accounts for less than half of the population, and the second biggest ethnic group accounts for more than 10 per cent, are described as multi-national states. There are only two such states – Kazakhstan and Bosnia-Herzegovina (op.cit., pp. 37–62).

10. For the Swiss case, see A. Riklin and S. Moekli, ‘Werden und Wandel der schweizerischen Staatsidee’, in *Handbuch des politischen Systems der Schweiz*, Bern/Stuttgart, Verlag Paul Haupt, 1983, p. 49. For the Belgian case, see Martin O. Heisler, ‘Hyphenating Belgium: ‘Changing State and Regime to Cope with the Cultural Dimension’, in Joseph V. Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies*, Massachusetts, MA, Toronto, Lexington Books, 1990, p. 179.

11. The civil and student protest of 1996–7 showed that this potential does exist in Serbia. What was lacking was political leadership capable of

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channelling this potential for reform into an alternative political, and consistently constitutional, strategy.

12. The guiding principle could be the statement by Cass Sunstein: 'The provisions of the constitution should be aimed against those aspects of the culture and tradition of the country which have had the most harmful influence on current political processes' (cited in Jon Elster, *op. cit.*, p. 39).

13. See *Kosta Čavoški, Ustav kao jamstvo slobode*, Belgrade, IFDT, 1994, pp. 102-3.

14. Lidija Basta, *op. cit.*, pp. 19-26.

15. Section 5 of the chapter on rights and freedoms in the Montenegrin constitution (articles 67-76) deals with the special rights of national and ethnic groups.

16. See Christian Lucky, 'Table of Presidential Power in Eastern Europe', *East European Constitutional Review*, no. 1, 1994, pp. 81-94.

17. The debate on regionalization started some years ago and the idea is gaining supporters among academics and in opposition circles. The idea is best elaborated in Miodrag Jovičić, *Regionalna država*, (Belgrade, Vajat, 1996), and in the draft constitution prepared by the same author: *Ustav regionalne države ujedinjenih srpskih zemalja*, Belgrade, Vajat, 1996.



9

Nations, Nationalism and 'Citizenism'

*Svetozar Stojanović***What is a Nation?**

Attempts to establish necessary and sufficient identifiers for those large social groups called 'nations' have failed. The most common argument is that nations are distinguished from each other by one or more of the following: language, religion, ethnic descent, state, territory, history, tradition, custom, values, and symbols. It is easy to provide examples that discredit such attempts. Serbs, Croats, and Muslims in Bosnia-Herzegovina, for example, share a language and a Slavic descent, but are three separate nations. Russians, Bulgarians, Greeks, Romanians, Armenians, Serbs, Macedonians are Eastern Orthodox Christians (except for those who are atheists and agnostics), yet they are undoubtedly different nations. For centuries, Jews had no state of their own, yet hardly anyone disputed their national distinctness. After all, even today almost all national groups do not have their own state. Finally, nations that coincide with citizenship, such as the USA, are to be found only in a small part of the world.

The category 'nation' can refer only to large social groups, the members of which have – to use a Wittgensteinian term – a 'family resemblance', rather than to those that share 'necessary and sufficient characteristics'. This means that for each group we call a nation we should be able to find at least one of the above-mentioned identifiers.

From among these 'family resemblance'-based groups it is possible to isolate two contrasting 'ideal types': the state-territorial type, and the cultural-ethnic type. Reality, of course, does not coincide wholly with these types. Thus, for example, even two very

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different notions of nation – American (state-territorial) and German (cultural-ethnic) – overlap to some degree.

Language is a typical identifier of the cultural-ethnic nation; it also serves an important function in the state-territorial nation. In order for immigrants to become US citizens, and thus Americans, they must demonstrate at least elementary knowledge of the English language. Socialization and education based on US history and on US traditions, customs, values, and symbols also help to integrate people into the American nation. Another similarity between the American nation and the cultural-ethnic type of nation is the growing tendency of Americans to stress their specificities: they are, for example, African-American, Mexican-American, Polish-American, Japanese-American, and Italian-American.

Germans (and the nations of East-Central and South Eastern Europe that were under their influence) have developed a cultural-ethnic concept of the nation. This does not mean, however, that they do not recognize that the territorial state has a great, sometimes even a decisive, role in constituting and preserving national identity and continuity. We use the term ‘cultural-ethnic nation’ rather than ‘ethnic-cultural nation’ because common ethnic descent is much more of a fiction than is a shared culture. Indeed, what is the likelihood that a nation (unless it has existed for a long time in uninterrupted isolation from other nations) is actually descended from the same ancestors even a dozen generations back, let alone longer? How much ‘shared blood’ do ordinary Germans have with their former monarchs and nobles? Is not this scepticism regarding common ethnic genealogy justified also in the case of the Serbs and their dynasties? (After all, Petar II Karadjordjević and his two brothers were born of a Romanian mother.) Nevertheless, one should not exaggerate: we have not yet seen a Serb who looks Chinese.

Both the state-territorial and the cultural-ethnic concept of nation are sociogenetic, historical – and realistic. The purely ethnic concept of ‘natiogenesis’, on the contrary, has a biogenetic, ahistorical and mythical character. (This illusion that the nation is a ‘community of blood and soil’ has often led to genocide.)

So, is ‘the nation’ a construct or a given? At one end of the spectrum are those who deconstruct the nation, claiming it is merely an ‘imagined’ or even an ‘artificial’ community. Others deterministically proclaim it to be a community given by nature, fate, history, and sometimes even God. Fortunately, this is a false dilemma: nations are historically constructed and built; not in an entirely arbitrary manner, and certainly not *ex nihilo*, but rather from given

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materials that have acquired their specific features over time. To adapt Marx's insight about men and history in *The Eighteenth Brumaire of Louis Bonaparte*: people make their own nations, but they do not make them just as they please; they do not make them under circumstances chosen by themselves, but under given circumstances directly encountered and inherited from the past. Because a person was accidentally born into his or her particular family and not some other – and consequently into a particular national milieu – does not, alone, make him or her part of that nation. School, the wider social environment, and the culture in general, also help incorporate that person into the nation. Only as an adult will a person perhaps be in a position critically to evaluate (or re-evaluate) and define (or redefine) his or her given national framework.

Some Thoughts on the Nation and Monotheistic Religions

Judaism, Christianity, and Islam are often major components of national identities. As such, they offer not only a direct transcendental guarantee of individual immortality but also strengthen that guarantee for those who belong to national communities. The conversion (real or alleged) of quite a number of communist atheists and agnostics into self-declared religious believers, and of communist internationalists into ardent adherents of their particular nations, is intriguing.

Many commentators have compared revolutionary communism with early Christianity; they have even classified it as a form of religiosity. The role of God, of course, was supplanted by that of a Perfect Future, for which many lives were sacrificed. The early communists had no illusion that they themselves would live to see the classless society, but they believed they would still be part of it in some moral and spiritual way. In this respect the similarity with the Christian faith is unmistakable. Unlike Christianity, however, communism did not have a genuine metaphysical-cum-transcendental reference point; it could not, therefore, be transmitted to more than one or two successive generations. The efforts to sustain communism as a sort of quasi-religion by sanctifying the embalmed bodies of communist leaders in mausoleums failed.¹

What is Nationalism?

The meaning of 'nationalism' is clearest when there is conflict between national claims. Here we define nationalism as the favour-

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ing of one nation over another in such a conflict. Depending on whether this favouring takes place either when both nations are equally entitled to their claims or when the former is less entitled to its claim than the latter, two kinds of nationalism can be clearly distinguished.

It is only nationalism in the second sense that ought to be evaluated negatively. Nationalism in the first sense is an almost universal, common-sense, and benign group partiality from which, presumably, any realistic social practice and conception – even one that is moral and ethical – must start. After all, what would self-identification, belonging, attachment, and loyalty to a nation mean if not this minimum partiality? No one can persuasively dismiss such partiality as ‘national egotism’.

Those people who, even in a situation in which two or more nations are equally entitled to their claims, do not put the interests of their own nation above those of other others usually play into the hands of the bad nationalists in their midst. (After all, today the world is even concerned about the survival of endangered animal and plant species.) If they do this exclusively to their own personal detriment rather than to the detriment of their nation they should be called national altruists. National masochists are quite different: they favour other nations at both their own personal and at their nation’s expense. Quite different again from both are anti-national egoists, not to mention national profiteers, who derive personal gains from their ‘national generosity’. Behind the latter two’s rejection of nationalism lies an extreme selfishness.

Of course, there is no moral duty to be an extreme altruist. Even less can we expect such an attitude to govern the conduct of nations. Genuine internationalist principle does not require national self-denial, whether altruistic or masochistic. Rather, it only demands that nations do not favour themselves over those who are more entitled to their claims.

Many Serbs obsessively ‘fight’ Serbian nationalism. Some of them did this under communism, while others have begun imitating them in the post-communist period.² This stance implies, wrongly, that nationalism is not a specific response to challenges and conflicts, and that it can be limited and controlled effectively by denunciation – when, in fact, only realistic responses and solutions can do this.

Nationalism in the positive sense degenerates into nationalism in the negative sense when self-identification and loyalty to one’s own nation becomes more important than considerations of justice

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and morality. Nationalism can assume malign forms, such as chauvinism and nazism, when the principle that *natio nationi lupus est* reigns supreme.

In order for one's attitude to be accurately criticized as nationalist, one does not have to belong to the nation in question. It would hardly be a reliable definition of an important concept if a person's attitude could not be judged to be 'nationalist' until one had learned about his or her nationality. Of course, the likelihood of someone's giving in to the negative nationalistic temptation is incomparably greater when the future of his or her own nation is (apparently) at stake.

It is typical for nationalists in the negative sense to apply double standards and thereby to violate the ethical requirement of universalism. For example, Croatian nationalists promote the creation of a distinct 'political-territorial entity' of Croats in Bosnia-Herzegovina (Herzeg-Bosnia) or even the full secession of these Croats, but deny that right to Serbs in Bosnia-Herzegovina, let alone in Croatia (Krajina). Serbian nationalists, on the other hand, support these rights for Serbs, but deny them to Albanians in Kosovo. As for Albanian nationalists, they advocate Kosovo's right to secession, but deny this right to Serbs in Croatia and Bosnia-Herzegovina. Nationalists in the USA support this latter position. Yet they do not back the secessionist aspirations of the Kurds in Turkey, although Kurds have no state of their own, whereas Albanians do (Albania). US nationalists usually justify the application of opposite criteria to two essentially identical cases by saying that Turkey, as a member of NATO, is of vital importance to US national interests.

The dictum 'put your own house in order first' is often misinterpreted and misused. It does not imply a moral duty to be critical only of the nationalism of one's own nation. Indeed, those who display indifference (or even scorn) toward their own 'national house' have no right to appeal to this dictum. What is more, they should explain in which sense it is their house at all!

Unfortunately, 'Yugoslavism' turned out to be an incomparably weaker construct than that of the cultural-ethnic nations within Yugoslavia. Anti-Serbian nationalists have invariably disqualified 'Yugoslavism' on the grounds that it is a covert form of Serbian hegemonism and unitarianism. Be that as it may, those who continue identifying themselves as 'Yugoslavs' have to try as much as possible to put in order all the national houses of former Yugoslavia, and not only the Serbian house. Of course, those who define themselves as 'a-

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national cosmopolitans' should consider all nations of the world as their own house (and a house that needs to be put in order).

Two kinds of nationalism exist not only with respect to relations between nations, but also within nations. Within a nation, positive nationalism becomes negative when co-nationals are required to subordinate all their identities, interests, rights, values, goals, ideals, and standards to those of the nation and, in extreme cases, are called upon to submerge themselves completely in the nation. This kind of nationalist collectivism suppresses and conceals individual, group, class and other cleavages. Instead of being open, inclusive, voluntary, flexible, dynamic, and complex, this kind of national identity is closed, exclusive, compulsive, rigid, static, and simple.

What is 'Citizenism'?

The state-territorial concept of nation may also be termed 'citizenist' (civic), since it encompasses all citizens of a country. Because cultural-ethnic nationalism was an important generator of the tragedy of the Socialist Federative Republic of Yugoslavia (SFRY) and the Federal Republic of Yugoslavia (FRY), some critics mistakenly believe that a citizenist attitude is by definition immune to the negative nationalist temptation. In reality, however, citizenism may just as easily slide into negative nationalism as cultural-ethnic nationalism.

A democratic state is obliged to treat all its citizens equally, regardless of their cultural-ethnic nationality. Undoubtedly, the citizenist principle of 'one citizen, one vote' is an immense achievement of modern civilization; indeed, without it, democracy would be impossible. Yet the realization of this principle is not in itself a sufficient bulwark against the domination of one cultural-ethnic nation over others. When this happens, the principle of citizenship in the positive sense becomes its opposite: citizenist nationalism (or nationalist citizenism). Cultural-ethnic interests, rights, values, institutions, and so on which are not those of the dominant group, instead of determining state organization and legitimation, are relegated to civil society. A Marxist analysis and critique of the abstract citizen (*citoyen*) could, *mutatis mutandis*, be applied here, with the difference that now the abstractness hides a cultural-ethnic instead of a bourgeois dominance.

Of the two most advanced historical precedents of state-nations, France and the USA, the latter has become so multicultural and

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multi-ethnic that it has been referred to as a 'microcosm of humanity'. Indeed, it is as close to the ideal citizenist conception of nation and state as could be found in the world today. One is justified in focusing one's critique primarily on the USA because of that country's domination of the world – 'imageological' and otherwise.³

Many Americans regard their (state-territorial) concept of the nation as more valid than the cultural-ethnic concept. Moreover, they tend – by definition – to reduce the concept of nationalism to a matter of culture and ethnicity. This is one reason why they tend to reject any possibility of a US nationalism emerging.

US citizenism was born largely of suppression and repression (violence often plays a major role in the emergence of states and nations). Indeed, the US state-nation was built on a foundation of genocide and ethnocide of indigenous peoples. In addition, African slave labour formed part of its economic foundations. (Until recently, the descendants of those Africans were deprived of civil rights, and were thus virtually excluded from US citizenship.) The hidden dimension of the USA is the historic dominance of the Anglo-Saxon, Protestant cultural-ethnic core (by now greatly diminished). Put another way, the current state-nation has concealed the nation-state.

For many US citizenists, the stressing of cultural-ethnic identities in their country is a form of nationalist blasphemy. They are willing to tolerate, to some extent, discourse on the multicultural character of the United States, but not on its multinational character. For them, it is *a priori* unacceptable that cultural-ethnic specificities could be taken out of the framework of 'civil society' and be used, potentially, to question the existing system; the principle of 'one citizen, one vote' may not be supplemented by the principle 'one nation, one vote'. Under no circumstances would US citizenists assent to a redrawing of states' borders in terms of cultural-ethnic criteria.

In the case of Yugoslavia, those individuals and political parties that insisted on citizenship as the only principle of state organization and legitimacy in the new independent states – Croatia, Bosnia-Herzegovina, and Macedonia – would have had to insist (but did not) that the Kosovo Albanians accept the unitary structure of Serbia ('one citizen, one vote')! That, however – as a concept and in practice – would be repressive citizenist-nationalism.

It is not the case that parties with a purely citizenist orientation are in the middle of the political spectrum of multi-national states of the kind that SFRY used to be and that FRY, Bosnia-

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Herzegovina, and Macedonia are now. (Before its 'ethnic cleansing' of Serbs, Croatia was also in this category.) In such states, the centrist political position is occupied by parties that combine a citizenist and a cultural-ethnic approach to the organization and legitimation of the state.

Shallow or Deep Political Cartography?

Fissures, rifts, erosions, underground streams, eruptions, earthquakes: geological metaphors are quite appropriate when analysing the break-up and disintegration of SFRY. Current geopolitical cartography, however, overlooks the layers of division concealed below the surface of the official maps of political divisions in the world. Shallow cartography is most often motivated by the citizenist viewpoint, the practice and imageology that neglects, forgets, suppresses, and conceals cultural-ethnic national divisions. We need a new, deeper cartography. Multi-layered maps should be drawn that reflect linguistic, ethnic, religious, cultural, economic, military, and genocidal sediments. Shallow cartography is one of the reasons politics tends to be reactive rather than preventive.

The tendency towards the dissolution of multi-national states is gaining momentum. During his tenure as secretary general of the United Nations, Boutros Boutros Ghalli expressed his anxiety that, if current trends continued, in a couple of decades there would be about 500 independent states in the world.

Some philosophers and social scientists have expressed scepticism about the chances of multi-national states surviving as democracies; only dictatorships, they say, can prevent such states dissolving along national lines. The collapse of the Soviet Union, the SFRY, Czechoslovakia, and even the FRY is taken as a further proof of the thesis. (As far back as the early 1960s, I advocated the gradual introduction of party pluralism into the SFRY because I feared that its abrupt introduction would precipitate the country's violent disintegration along national lines.)

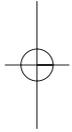
There is no 'iron law' of disintegration, only a strong tendency towards it. This tendency is present not because of the multi-national composition of states *per se*, but because of the territorial concentration of nations within those states. The capitalist market in the USA, for example, successfully uprooted immigrants, and the descendants of immigrants, from areas where their cultural-ethnic compatriots had tended to concentrate, and dispersed them throughout the country. On the other hand, this has not happened in countries like Canada, Belgium or Great Britain.

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1. Some of Josip Broz Tito's statements and actions are also instructive. In 1953, after the burial of Boris Kidrić, one of Tito's Politbureau comrades, Milovan Djilas, complained to Tito that 'after death there is nothing'. Tito snapped back: 'How do you know there is nothing?!' Was this not the agnostic – even the believer – suddenly breaking through and speaking from the mouth of a pronounced atheist? Was this why, towards the end of his life, Tito ordered that his gravestone not be adorned with the usual communist-atheist symbols? Could this have had something to do with Tito's national self-identification as a Croat in 1964, after calling himself a Yugoslav for at least the previous twenty years? Drawing close to the end of his life, he publicly boasted that he had never signed a single death sentence. The real truth, of course, was the opposite: not only had he ordered that individual death sentences be executed, but he had created a system of mass executions during World War II, and an even more extensive one after taking power. True, he made others sign the death warrants: as if he wanted to deceive God!

2. In the 1980s, the remains of the Serbs thrown into mass graves by the Ustasha-Nazis during World War II were disinterred and given a proper Eastern Orthodox religious burial. In some Serbian circles, however, this practice was indiscriminately attacked as nationalistic. These attacks offended the intimate relationship that exists between many Serbs, the Serbian nation, and Serbian Orthodox Christianity – all the more so since the descendants of those victims had certainly felt remorse for not having paid due respect to their relatives much earlier.

3. I define 'imageology' as a set of *images* that social groups use, at the expense of truth, to justify their own actions and to discredit those of their rivals, opponents, and enemies. I base this critical concept on my definition of ideology as a set of *ideas* that social groups use, at the expense of truth, to justify their own actions and to discredit those of their rivals, opponents, and enemies. However, I have noticed that philosophers, social theorists and intellectuals generally tend still to overemphasize the role of ideas in image creation and even to reduce image creation to ideas. Nothing can be further from the truth in an era dominated by visual mass media. My 'imageology' (and 'critique of imageology') is a concept broader than 'ideology' (and 'critique of ideology'). The latter is one kind of the former – and one, moreover, which is of decreasing importance.



Media and Democratic Society: A Survey of Post-communist Experience

Colin Sparks

Introduction

The central motivation of the majority of the internal opposition to the communist regimes in Europe was a desire to establish democratic societies. Of course, there were important differences in what was understood by 'democracy', but there was general agreement that a substantial reform of the mass media was an essential objective.¹ The communist media were seen, quite rightly, as totalitarian. All the media, whether formally owned by the party or formally independent, were completely under the control of the party leadership. The central committee of the ruling party dictated their editorial policies. Proven loyalty to the party was a condition for employment, and still more for advancement. Very often, the general secretary of the party treated the media as his private mouthpiece. Clearly, such goings on would not be tolerated in any democratic society and the media would have to change radically.

There was less agreement as to what the direction of change should be, but most people looked to a version of the media in the Western countries for inspiration. Some people looked to the USA, some to Germany, and some to Sweden. Perhaps a few even looked to the UK. What they saw, or believed they saw, in these different countries were mass media that were autonomous and independent in their editorial policies. They saw journalists who were trained as professionals and promoted exclusively on merit. They saw newspapers and broadcasting stations that were fiercely independent of government, and not at all afraid to make harsh criticisms of wrongdoing by even the most powerful. They saw editors and

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journalists who had the resolution and courage to defy presidents, prime ministers and parliaments, and to print or broadcast the truth regardless of consequences. These were democratic media and it was urgent that they be copied in the countries breaking free from communist rule.

Ten years later, the reality is very far from those dreams. Nowhere, outside the special case of the former German Democratic Republic, do the media correspond at all closely to the desired model of the Western media. Both the press and broadcasting remain partisan, and sometimes outrageously so. In the state broadcasters, senior appointments are still seen as one of the spoils of political office, bias in news is commonplace, and the attempts to emulate the Western model of public service broadcasting have not been a success. Commercial broadcasting has not proved the panacea that many hoped. Winning a licence, and sometimes continuing to hold the licence, has been a deeply political process. Very often, holders of commercial licences have been closely allied to politicians, or have themselves harboured political ambitions.² Their programming strategies, too, have been criticized for massively overemphasizing imported programming and neglecting local production. The newspaper press has seen a deluge of new titles, and nearly as many closures. The communist-era titles, often controlled by people who were senior editorial figures in the recent past, continue to have powerful positions. Readership overall has fallen dramatically and in many countries the market is dividing between serious and tabloid titles.³ Journalists still fail to operate impartially, even those younger ones trained by Western experts, and sensationalized reporting is commonplace. Overall, although the picture is very different from that of the communist era, and on almost any measure much more open, it is far from ideal.⁴

Informed observers of the region will dispute little, if any, of the above, although there would undoubtedly be differences of detail depending upon which society was being considered. The question of why such noble dreams have had such squalid outcomes is more contentious and difficult to answer. In this chapter I want to advance four main reasons why all of this has happened. My interpretation is based on a detailed study of only some of the countries in question (Poland, Hungary, the Czech Republic, and the Slovak Republic), although I do have some acquaintance with the situation elsewhere. My observations are certainly open to correction by those with a more detailed knowledge of developments in the region, but I think that the main lines of my conclusions apply quite widely.

Four Reasons for Unexpected Outcomes

The reasons for the unexpected, and undesired, outcomes in the transformation process can be grouped into two main classes. One group concerns the beliefs and attitudes of the main actors, and constitutes what we might term subjective problems. The other group concerns the nature of the transformation process itself, and we may term these objective problems. We will consider each group in turn.

Subjective problems

The first subjective problem was that the anti-communist opposition often held unrealistic views about the nature of the Western media. There is a wide range of both newspapers and broadcasting institutions in the Western capitalist world, and the nature of their output varies dramatically. As one might expect, some of this output is very good, and some is not so good. What the old opposition tended to see was, quite understandably, the best about the Western media. We might compress this vision into saying that what they wanted was newspapers like the *New York Times* and broadcasters like the BBC (British Broadcasting Corporation). They wanted newspapers that were objective and impartial, carried an enormous variety of substantial reporting and commentary on important political and economic questions, had a wide international range, and were fiercely independent of any political party. They wanted broadcasters whose news and current affairs programming lived up to those same high standards and was broadcast to a mass audience, who were independent of political pressure, and who, in addition, put on the extensive and various original productions that are essential for healthy cultural life in a contemporary society.

There are three problems with this vision. In the first place, there are any number of well-documented critiques that establish that the reality of both of these media organizations – the *New York Times* and the BBC – is rather different from their self-images. Although both are independent from organized political parties, they tend to over-represent the voices of elite groups in internal debates, they tend to be relatively uncritical of the international policies of their respective countries, and there are circumstances in which both have bowed to direct political pressure.

The second problem is that neither organization is typical of the Western media as a whole. We may conveniently contrast the

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US and British media to illustrate this. In the UK, the national newspaper market has two characteristics that render it quite different from the *New York Times* model. First, it is very stratified. While there are some newspapers – the broadsheet press – which have pretensions to being journals of record, they account for at most 20 per cent of daily circulation. Most of the press is very different, being in varying degrees ‘tabloid’ in its news values, and thus more concerned with sport and scandal than politics and economics.⁵ Secondly, all national newspapers, broadsheet and tabloid, are regularly, unashamedly and stridently partisan in both their reporting and commentary.⁶ These differences are regularly noted, and lamented, by US journalists.

Broadcasting presents a different picture. While US broadcasters certainly produce some serious news and current affairs, these programmes tend to be shown outside prime time, or on channels like PBS (Public Broadcasting Service) and NPR (National Public Radio), which reach only niche audiences.⁷ Culturally, too, although US broadcasters certainly produce and broadcast a vast quantity and range of original programmes, these are often sharply criticized from inside the USA as being too predictable and insufficiently challenging. If we broaden our view, we can certainly find other Western countries where there are newspapers that are even more partisan, and broadcasters who are much more obviously subject to political pressures.

The final problem is that this vision ignores the social circumstances that produce particular media forms. It is simply not possible to abstract the mass media from the social relations in which they develop and to consider their internal working in isolation. On the contrary, the mass media are always and everywhere deeply embedded in the particularity of a given society. We may illustrate this very simply by trying to answer the question: why is it that the commercial press in the USA is notoriously impartial, while the commercial press in the UK is notoriously partisan? A good part of the reason lies in the different economic position of newspapers in the two countries. In the USA, most newspapers enjoy local monopolies.⁸ However much they might preach the virtues of the free market and of competition, they don’t experience either in their own businesses. Politically, the US population is divided, mostly between Republicans and Democrats. If you are the only newspaper in a particular city you want to reach readers who adhere to both main parties. It is therefore sensible and logical to report both sides impartially and equally. To do otherwise would

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risk alienating the supporters of the aggrieved party and thus reduce your potential circulation. In the UK, the national press market is fiercely and ruthlessly competitive, and newspapers must attempt to occupy particular niches in the overall market. Politically, the UK population is divided, mostly between Conservative and New Labour. If you are one of many competing newspapers, then your political alignment is one of the features of your brand (often not the most important one), and it helps to win and secure the loyalty of a particular group of readers. From the different economic circumstances flow different journalistic practices.

A similar point can be made about the genuinely considerable independence from political parties enjoyed by the BBC. The UK is a relatively rich and stable country, and political divisions between the main parties, while greater than those in the USA, are relatively small compared with those in many other places. There is a relatively homogeneous and self-confident élite whose shared values and experiences override many of their merely political differences. It is in these circumstances that it is possible for one section of the élite to control broadcasting more or less independently from that section of the élite that controls the levers of direct political power. The cultural élite is trusted to represent more or less fairly the main divisions within the political élite. The limits to the BBC's independence are set by the extent to which there is a challenge from outside this élite consensus. One recent, and ongoing, example, has been the civil war in Ireland, in relation to which the broadcasters have been neither independent nor impartial. The views of those in northern Ireland – for example, Sinn Fein, the legal political arm of the IRA (Irish Republican Army) – who have violently rejected their domination by the British élite were not, until very recently, at all fairly reflected in British broadcasting.⁹ Another example: the Thatcher government, which posed some challenge to the prevailing élite consensus, made increasingly frequent political criticisms of the BBC, and intervened repeatedly in its running in a way that was designed to pull the BBC into line with the government's orthodoxy.¹⁰ In societies in which political divisions are much wider and more bitterly contested, and in which élite consensus is not the norm, one would not expect the kind of autonomy enjoyed by the BBC to emerge or flourish.

The frequent inability of the practice of the Western media to live up to its own self-image, and the extraordinary diversity of really existing forms of both newspapers and broadcasting, reflect the fact that historical and contemporary circumstances vary very

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<i>System</i>	<i>Press</i>	<i>Market stratification</i>	<i>State TV</i>	<i>Commercial TV</i>	<i>Foreign TV ownership</i>
United States	Monopoly	No	No	Yes	No
West European	Competition	Yes	Yes	Yes	At least partial
Post-communist	Competition	Yes	Yes	Yes	At least partial

Figure 1 *Typology of Media Systems in Europe and the USA*

widely indeed in 'the West'. One major division is that between the experience of the USA and of Europe. If we compare some of the main axes of media systems in the two continents, and add the axis prevailing in most post-communist countries, then we obtain the picture represented in Figure 1. In this light, the media systems that have emerged in post-communist societies appear as recognizable parts of a more general European model of the media, in sharp contrast to that of the USA.

Within itself, however, the European model is far from uniform. We may borrow a concept from Slavko Splichal and term the post-communist version of the general European model 'Italian', albeit with some important reservations.¹¹ This model is one in which political power has a direct and acknowledged presence in the staffing and policies of the broadcasting institutions, and in which the press is concerned primarily with representing the opinions of different élites to each other (providing an information service for the benefit of the general public comes a very poor second). We might further note that, although we have termed this model 'European', its general form is much more widespread.

The second subjective problem concerns the ideas that the opposition believed would act as a guide in realizing this vision of autonomous media. These, again, were various, but it is not unreasonable to assert that one version or another of the theory of 'civil society' was a key element in most perspectives. In most renderings, this theory claimed that the key fault of the communist system was that it had obliterated civil society, understood as some class of non-state organizations, and that a democratic society required the reconstruction of a social space in which these could flourish. It was the empowerment of civil society with respect to the mass media that was seen as one key to democratization.

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<i>Theory</i>	<i>High point</i>	<i>Aim</i>	<i>Mechanism</i>	<i>Outcome</i>
Radical	Early Solidarity	Collective empowerment	Mass self-activity	Failure
Classical	Contemporary reality	Pursuit of self-interest	Selfish economic man	Success
Democratic	Just before 1989	Rule-governed society	Non-state associations	Failure
Utopian	Just before 1989	Consensual society	Decent associations	Failure

Figure 2 *Four Theories of Civil Society*

When we look more closely at the content of the general theory of civil society, a pattern of four major usages emerges, which are outlined in Figure 2. In its recent usage, the theory dates from the early days of Solidarity in Poland, when Solidarity was a mass working-class movement with a strong insurrectionary wing. ‘Civil society’ in this period had a strong, if imprecise, radical edge: it called for the subordination of Polish radio and television to governing councils made up of elected individuals, whose tasks would be to represent the whole of society and to ensure that broadcasters reflected the diverse experiences of the population.¹² After martial law, and the subsequent retreat of the ‘hot moods’, this idea lost its appeal and was replaced by one of three alternatives. The first of these was a simple restatement of the classical Hegelian notion of civil society as the realm of the pursuit of private economic interests, in contrast, on the one hand, to the immediate affective relations of the family, and, on the other, to the general political interests represented by the state. This involved a simple programme for the mass media: privatize as much as possible as quickly as possible and leave it to the market to realize democratic representation.¹³ The other two versions – what I call the democratic and utopian versions – were less drastic in their prescriptions. Both saw civil society as being constituted out of social organizations independent of both the state and the economy. For many, this meant that civil society was essentially made up of voluntary organizations in which citizens came together to pursue their various interests (though some, very problematically, centred the concept on the family). In both these versions, the programme for media reform was to ensure that the representatives of civil

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society controlled the main public organs.¹⁴ The principal difference between the democratic and utopian approaches lay in what they believed to be the content of these voluntary organizations. For the democratic version, civil society was made up of all organizations, and these would act so as to establish a society in which social life was governed by established and transparent rules that would be fair to all citizens. The utopian version noticed that some voluntary organizations made no secret of the fact that they had no time for fairness and equality, and proposed only to include those organizations of whose aims and methods it approved in the happy family of civil society that would get to run the media.

Unlike many ideas in social theory, which can go along peacefully for years without ever encountering reality, these various ideas of civil society were subjected to a thoroughgoing practical test. In the aftermath of 1989, people who believed in three of the versions of this theory were in a position to advance their solution to the problem of democratizing the media. For reasons to which we will return below, very few people held to the radical version by 1989, and no serious attempt was made to implement it. The other versions, however, all had many powerful advocates. In practical reality, neither the democratic nor the utopian visions of civil society proved workable. The version that came closest to success was the classical one of the pursuit of private interest.

In broadcasting, various attempts were made to draw up regulations that would have ensured that the governing bodies and councils contained a majority of representatives from voluntary organizations such as women's groups, youth organizations, churches and so on.¹⁵ Generally, as these proposals made slow progress towards becoming actual laws, they were revised to reduce the representation of civil society and to increase the power of political appointees.¹⁶ We might say that there was a shift from a German to a French model of broadcasting regulation. In practice, even where civil society retained a toehold, the actual conduct of business was dominated by political agendas.¹⁷ In the state broadcasters, this meant that they continued to be subject to political interference. In the private broadcasters, it meant that they both appeased the ruling political forces and defied the discredited broadcasting regulators when it suited their business needs to do so.

The newspaper press presents a different history, albeit one that leads to the same depressing conclusions. The majority of the press was privatized: sometimes as a result of what amounted to theft by the editorial staff, or through sale to a local consortium, or through

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sale to a foreign buyer.¹⁸ In a very short time the newspaper press was transformed into an advertising, subsidized, commercial model. In no cases were bodies established to represent the interests of civil society in the running of particular newspapers. The readers were transformed from the objects of political indoctrination to the objects of commercial exploitation with scarcely a pause. At no point were they invited to participate in shaping the policy of the papers they read. The closest approximation to empowering civil society anywhere in the press was that in some cases the journalists came to run newspapers, although even there the senior journalists usually managed to secure operational control, and the logic of the market meant that they ran these newspapers in more or less the same way as any other was run.

In post-communist Europe, civil society has meant capitalism, red in tooth and claw. The democratic and utopian theories have proved insufficiently robust to act as a guide to practical activity, although that has not, surprisingly, discouraged their advocates. The only way in which the classical theory of civil society has not been completely vindicated is in its promise of democratically representative media. Politicians and the state still remain powerful forces shaping media content.

Objective problems

The first of the objective problems that led to unexpected outcomes was the nature of the transition process itself. The rise and fall of Solidarity – which echoed throughout the entire region – influenced the thinking of both the opposition and the ruling party in Poland. For the less radical of the oppositionists, the lesson of Solidarity was that any attempt to overthrow the regime by mass action was both dangerous and impractical. Instead, it made sense to use the immense power of proletarian protests as a bargaining chip with the regime. For the more far-sighted members of the ruling party, it demonstrated that, once the Russian guarantee of military support was withdrawn, there was always the prospect of another 1956, but this time without the promise of rescue from outside. The moderate wing of the opposition and the reform wing of the communists, in Poland and elsewhere, began a long process of negotiation that eventually, and much to the surprise of many of the participants, led to the downfall of the communist system.

The participants in these negotiations were agreed on one central thing: it was necessary to resolve the issue by negotiation,

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and under no circumstances were the dangerous masses to be allowed to take centre stage. In Poland and Hungary, there were extremely smooth transitions entirely under the control of round-table and parliamentary discussions. There were some variations on this pattern. In the Baltic republics, in the various constituent parts of Yugoslavia (the Socialist Federative Republic of Yugoslavia), and of what is now the Russian Federation, there were substantial popular mobilizations. But these were motivated by sections of the old bureaucracy, or by new nationalist politicians, whose aim was to use public demonstrations as a tool for pressuring their opponents. Elsewhere, notably in East Germany, Czechoslovakia, and perhaps Romania, something rather different took place. In those countries, there were few active 'reform communists': they were either dead, in jail or exile, or in obscure provincial disgrace. The opposition had no one to negotiate with, whether it wanted to or not. In those countries, it was the masses that initiated the process of transformation, and, at least in East Germany and Czechoslovakia, this produced brief but interesting developments of popular power. Everywhere, however, 'order' was restored and the process was taken over by experts and politicians meeting in the closed committee rooms of power discourse.

Given that everywhere the end of communism was a process that was dominated by officials and politicians rather than ordinary people, it is not surprising that almost everywhere the institutions and even many of the supporters of the old regimes survived unscathed. In country after country, the army, the police, the civil service, the education system and the media display a marked continuity from the past.¹⁹ The communist general, superintendent, functionary, professor and broadcaster of yesterday are today the capitalist general, superintendent, functionary, professor and broadcaster. In very many cases also, the old communist factory manager is the new capitalist entrepreneur. Almost everywhere, the successor parties to the hated and discredited communists form a major political force and have often been elected to government. The only real exception to this general rule is the former German Democratic Republic. There, big changes have indeed taken place: the ready-made political, economic and bureaucratic apparatuses of the continent's largest and most powerful state – West Germany – have been transplanted wholesale, in the media as much as elsewhere.²⁰ In other countries, where that option was not available, social continuity has been one of the key features of the epoch. There were real revolutions in 1989. One system replaced another. But this was a

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political revolution, one that changed the way society was governed, not a social revolution that changed the way it lived.

Given that social continuity, it is not surprising that many of the bad old habits have survived, as much in the mass media as in the rest of society. After a brief golden age of freedom during the death of the old and the birth of the new, journalists and other media workers have returned to the iron cage of bureaucracy. True, their masters change more often now, but they still have masters, and they still have to please those masters in order to keep their jobs.

The second objective obstacle to the realization of the idealized model of the Western media follows directly from the negotiated character of the transition. The political revolution meant that new people were running the government, but social continuity meant that many positions of social power were still in the same hands as before. What was more, there was no active popular movement demanding that the government carry through a dramatic transformation. On the contrary, the new governments – whether they wanted to or not – soon found themselves confronting the need to take decisions that would lead to a rapid fall in the living standards of the mass of the population.

None of the social groups that wielded power after 1989 had any interest in further democratization (and certainly none of the Western governments that were so free with advice were going to push for any such thing). The politicians in government wished to hold on to power, and they saw control of the mass media as one potential tool in that struggle. Opposition politicians wished to gain power, and they took exactly the same view of the mass media. For their part, the survivors of the old regime saw the new circumstances as an opportunity to transform themselves from bureaucratic managers into real live capitalists, and were interested in making sure that debates about economic decisions were undertaken on grounds that favoured their interests.

The general outcome of the interplay of these social forces has been what is sometimes termed ‘political capitalism’. By this is meant a form of social domination in which there are close alliances and mutual support between the holders of political power and the holders of economic power. This concept remains very much to be developed, although its accuracy as a first description of élite behaviour in the former communist countries is very striking. (It is certainly the case that this kind of interrelationship between politics and economics occurs much more widely than just in post-communist societies; it may, indeed, be a more general form of capitalism

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than theoretical abstraction from the United Kingdom in the nineteenth century, or from the USA today, suggests.)

However that may be, it is clear that the transition from state ownership to private ownership of productive property could not, in the absence of a radical upheaval, be achieved in any other way. It was political will that was needed to privatize vast chunks of the economy, and political choice that dictated who was to benefit from that process. Politicians, their families, friends and associates, could broker political power for economic advantage, and businessmen could broker economic advantage for favourable political treatment.

There are, of course, numerous well-known examples of exactly such processes taking place in the mass media in the region. Those in the former Soviet Union are the most spectacular and shameless, but these are sometimes attributed to peculiarly primitive Russian conditions. In the much more 'advanced' Western post-communist countries, however, there are also clear examples of exactly the same thing. One example is that of the career of the most successful of local media moguls, Vladimir Zelezny in the Czech Republic. A close associate of one of the leaders of the first post-communist government, he and four colleagues were awarded a television licence. This they 'cashed in' in alliance with a 'survivor bank' (a bank that had continued structurally intact from the old to the new order) and a US political businessman, producing in TV Nova the region's first legal commercial broadcaster. Zelezny was attacked by the dominant forces in the second post-communist government, and responded by reaching a political rapprochement with the prime minister. He used this political influence to force changes to the broadcasting law in the interests of his company, and he himself expressed political ambitions. In 1999, he brought off the bold stroke of breaking with his US backer and seizing control of the now very successful and profitable station. So far, at least, political allies have ensured that the outraged Americans cannot get back what they see as their rightful property.²¹

It was always idle to suppose that, in circumstances such as these, the media would develop towards the kinds of content that is believed to be characteristic of the Western press and broadcasting. On the contrary, with so much personal and economic capital at stake, control of the symbolic environment was perceived to be at least as important to politicians and businessmen in the new order as it had been in the old. Bias, distortion, downright fabrication and brutal character assassination were bound to be central to

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a media system that was at once one of the levers and one of the stakes in a bitter struggle for personal enrichment and political influence.

Taken together, these four factors have meant that the outcomes for the post-communist media never had any chance of approximating to the dreams of the opposition. The realities of the transition meant that it was always unlikely that the social conditions required for either a BBC or a *New York Times* to flourish in any country in the region would be present. Élite empowerment, and the subsequent bitter internal struggle to become the masters of the new order, meant that there would always be pressures towards a subservient, commercialized, and politicized media. The fact that the opposition had an unrealistic idea about the media organizations they wanted to emulate meant that even the best of them lacked clear guides as to what might be effective in their own circumstances. Those who adhered to the democratic and utopian versions of civil society were particularly ill equipped to confront the realities of power and money that dominated the social scene and swept away any hope of enshrining the power of voluntary associations in the running of the media. The people who had the most vulgar and stunted vision, and believed that civil society could be summed up in the pursuit of private economic interest, had at least the satisfaction of seeing that interest overrun wide areas of the media. Where they were disappointed was that this triumphant capitalism did not lead to free and democratic media that pursued the public good as a condition for prosperity. No one had any programme of action that was clear and effective enough to make a difference to the force of circumstances that led to the universal squalor of the present.

What of the Future?

No social scientist can predict the future with a crystal ball; those who say they can are charlatans. The best that we can do is to extrapolate from existing trends and make provisional claims about what might be the case on the assumption that there are no intervening variables which we have been unable to take into account. In this case, there are so many different variables at play that even that sort of tentative projection is fraught with difficulties. Nevertheless, there are three different versions of the future of the mass media in the region that command some degree of credibility.

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The first is what we might term the optimistic projection. On this account, things will slowly get better. Politicians will learn the rules of democratic life and stop trying to bend the reported world to their own particular interests. The stresses of privatization will be overcome. Tame bureaucratic businessmen, who will conduct their affairs in an orderly fashion, will follow the wild entrepreneurs who run things today. A new generation of journalists, trained to the best Western standards by visiting US journalism-school educators, will replace today's corrupt and cynical time-servers, and journalism will be transformed into a respectable and truthful enterprise. Journalists will no longer be subservient hacks but ethical and independent professionals. Proponents of this view differ in their assessment of the likely timescale for this, but they agree that there is a teleological drive in the capitalist media and the capitalist state that makes it certain eventually to happen.²²

The second is what we might term the pessimistic projection. This detects no immanent drive towards free and independent media, and claims that, around the world, a close relationship between the holders of political power and the holders of media power is the most common situation. On this account, while the tides of political intervention and opportunistic alignment might ebb and flow, there will be no transition to a qualitatively better state of affairs. They note that the desire to manipulate the mass media in their favour is a common feature of politicians of all political persuasions, even in rich and stable democracies. They say that legitimate Western businessmen, like Silvio Berlusconi and Rupert Murdoch, understand very well the interpenetration of politics and the media ownership, and that Zelezny and his ilk are more likely to mature into local versions of that particular social type than transform themselves into paragons of editorial non-intervention.²³ They are much more sceptical about the independence and integrity of journalists, even those who graduate from the best US journalism schools, and believe that even the best of intentions can be overridden by the pressure of everyday life. There might be room to fight for this or that improvement, the pessimists believe, but it is idle to hope for any genuinely democratic media, in the East or in the West.

The third position we may term the realistic projection. To coin a phrase, it combines pessimism of the intellect with optimism of the will. It shares with the pessimistic school much of the analysis of the current situation, and accepts its claim that there is no natural process that will produce democratic media. On the other

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hand, it does not see this as a more or less inevitable outcome of the current situation, and thus retains a share of optimism. A continuation of the current situation is one possible, perhaps even probable, outcome. Certainly it is unlikely that in the short term circumstances will arise that can transform the mass media. That does not mean, however, that such circumstances can never occur.

What might these circumstances be? In order to answer that question, we need to consider who might have any interest in democratic media. Clearly, neither the politicians nor the businessmen who do well out of the current situation are likely to provide a focus for the kind of social movement that could transform the mass media. On the other hand, while the achievement of political liberty was the great achievement of the overthrow of communism, economic and social tyranny remains unchallenged. It is, I think, with the social groups who have an interest in extending the revolution of 1989 to economic and social life that any hope of democratization in general, and democratization of the media in particular, lies. These are the only people who have an interest in ending the current situation.

This prospect is not some alien importation into the politics of the region. We can recall the first, radical, meaning of 'civil society'. That was a concept that called, however confusedly, for something rather more than just political democracy. The implication of the radical version of civil society is that social and economic tyranny is as inimical to human freedom as is political tyranny. Clearly, none of the forces that hold power in the former communist countries, or in the long-established capitalist countries for that matter, have any interest in pursuing that kind of radical democratization. The only people who have an interest, actual or potential, in such sweeping changes are the people who provided the driving forces for Solidarity in its great days and who were excluded from the transition negotiations in the interest of an amicable settlement. It is with those people that the hope for a radical version of civil society, and for genuinely democratic media, can find a home. Perhaps the idea of civil society, even in its radical form, is not a clear enough guide as to how one might achieve that great objective, but it provides one possible starting point for any movement that seeks to change the current lamentable state of the mass media.

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11

Internal and External Preconditions of the Democratic Reconstruction of the Balkans

Djuro Kovačević

The tragic history of the Balkans (with its dramatic epilogue in the last decade of the twentieth century) seems to be giving way to the democratic transformation of Balkan societies. Modern Athenians, the descendants of the founders of democracy, having overcome their historical cynicism, are enjoying considerable success in reshaping Greek society and in furthering economic development and democracy in Greece. In other parts of the Balkans the democratic foundations of societies have also been rebuilt, as have the formal structures of legal and political institutions and regimes. Everywhere there is a growing demand for democracy. The progress towards democracy is taking place at different speeds in the various states in the region, but no state is standing still. Even in the Federal Republic of Yugoslavia (FRY), where the political obstacles to democracy are greatest, the internal potential for democratic transformation is increasing.

Internal Preconditions

Throughout almost the whole Balkan area people expect a lot from democracy. Democracy is expected not only to change the structure and the functions of the state and of political power, to make political life free, and to make free elections and parliamentary government possible. Democracy is also expected to overcome backwardness and the crises of development, to bring about

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modern and successful economic development, and to create work – and opportunities for work – which would allow people to live decently. In other words, democracy is expected to lift societies to a European standard of social development and to introduce a European quality of life.

Seen from this perspective, democratic reconstruction in the Balkans does not consist of a mere change in the principles underpinning the structure of state and society, independent of development. On the contrary, development is the key: without it, democratic reconstruction has no meaning. Only if democratic reconstruction is linked to development will the transformation of the Balkans be successful, and democratic values become central.

The ‘hunger’ for development makes possible the democratic transformation of the Balkans: the unbearable lives that most people lead, and the fact that they have few prospects for a better life, are sources of democratization. Democratization is already underway. It will continue to grow, provided successful economic and social development takes place, and if people – above all, young people – do not feel hopeless but, on the contrary, feel that they have a future.

The first institutional preconditions for the realization of this ‘internal’ potential – among other things, multi-party systems and the existence of numerous non-governmental organizations – are already in place: the legalization of the plural structure of these societies is a great step forward from the time of one-party rule and a single ideology. Also, despite the serious economic crisis evident in the post-communist Balkan states, and the fact many sectors of society in the region are dependent on state support, there is an increasing acceptance of the market economy. Privatization, free enterprise, and the readiness to take risks for oneself are becoming the main features of the changes underway in the socio-economic sphere. These trends can only become stronger if the prospects for development improve. Is it not logical to assume that a growth in the number of economically free individuals will produce a greater number of politically free people, that is, citizens? In other words, if the democratic reconstruction that has taken place is matched by development, the internal preconditions for democratic transformation will increase. The effectiveness of these preconditions, however, depends on the initiation of a new cycle of development, and particularly on successful economic development. This is why development is the key to democratic transformation.

External Preconditions

What are the external preconditions of the democratic transformation of the Balkans? There are almost no self-sufficient societies in the world. Even the most powerful Western society, that of the USA, depends on global resources, on the world market, on Arab oil. Even large countries such as China and Russia cannot function without foreign capital and investment. Though they depend to a great extent on each other, members of the European Union (EU) need resources from other parts of the planet for their economic development. The extent to which individual countries are dependent on others differs, of course, from case to case: some countries are subordinate, while the most powerful have risen to dominate global development. The bottom line, though, is that the development of each society is to some degree influenced from abroad. Mutual interdependence is the dominant characteristic of development in the modern world.

Balkan societies are no exception to this rule: they are almost all highly dependent on foreign actors – on external conditions – for their development. The significance of these external conditions for the democratic transformation of the Balkans has increased in recent years. While Greece, and to some extent Turkey, are examples of this dependence *decreasing*, this is not only as a consequence of democratic reconstruction but also – indeed, above all – because of the prior high level of foreign investments they enjoyed. Such dependence as a way of ensuring progress in development would be healthy for other Balkan societies as they learn about democracy.

The international position of the Balkans, as well as its internal political configuration, has changed. The traditional picture of the region as fragmented and internally in conflict because of its being divided between East and West belongs to the past; nor is the Balkans any longer being contested by various powers. The Balkan region is now in the Western sphere of influence, that is, in the sphere dominated by the United States and the European Union. Of course, Russia also has interests in the Balkans. However, Russia does not have the power with which to realize any possible neo-imperial pretensions. It faces a more immediate and important task: how to rebuild itself (state, society and economy). This was evident in Russia's turning down of the proposal (made by sections of the Serbian oligarchy as a way of saving the FRY) for including the FRY in the union of Russia and Belarus. It was obvious that Russia valued its relations with the

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West more than its allegedly important ties with its so-called fraternal and historical ally in the Balkans.

Today the Balkan region is close to its long-desired goal – being part of Europe. The external preconditions for the democratic transformation of the region are defined by the USA and the EU. People in the Balkans will not be able to excuse any failures in the democratic reconstruction and development of their region by referring to pressures coming from Asia or Russia.

Democratic transformation, which the West can decisively shape, is incompatible with any form of neo-colonial status for the Balkans. It is also incompatible with the introduction of democracy through bombing. It is compatible both with investments in development and property which bring profit to investors, and with the establishment of rigorous Western market principles and labour practices. Every action that will stimulate development that is of mutual interest to the parties involved will, directly or indirectly, strengthen democratic values and the authority of democratic institutions. Millions of people in the Balkans and hundreds of thousands in the FRY are expecting exactly this, and they are ready to take part in such transformation.

The democratic values of the West – of Europe and the USA – have to become integral to the development of the Balkans. The rule that democracy stimulates development and vice versa is valid in the Balkans.

Whether or not Western interests lead to the promotion of the Balkans as a region of Europe, one that is an integral part of European integration, remains to be seen. It is nevertheless clear that nothing else would be acceptable for the Balkans. The Balkans are ready for development and Europeanization. The conflicts in the region, particularly those triggered by the dissolution of the Socialist Federative Republic of Yugoslavia, could be overcome. They have already lost most of their force; they could be replaced by competition and co-operation. The West – above all its key protagonists, the USA and EU – should do more to promote democratic reconstruction in the Balkans. A particularly important issue is whether or not the European Union will include the Balkans in the process of European integration.

No serious person in the Balkans is expecting someone else to do our work. Nor is anyone expecting a new Byron to emerge, someone who will support the Balkans' struggle for democracy as Byron joined the Greeks in their struggle for freedom in the nineteenth century. Why would anyone feel that the West has

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obligations with regard to Balkan development just because the West promotes the ideals and values of democracy?

What would be welcome is if the reasonable current and long-term interests of the West could be reflected in the development of the Balkans, and if the West could find partners in the region whose interests in development match their own. Only this approach can create opportunities for the democratic transformation of the Balkans. To further this end, 'development' should be placed in front of 'stability' in the title 'Pact for Stability in South East Europe'.



12

Promoting Stability and Good Neighbourliness? Assessing the European Union's Policy towards South Eastern Europe

Richard Whitman

Introduction

This chapter offers a critical assessment of the current policy of the European Union (EU) towards South Eastern Europe. It begins by asserting that the EU has developed a particular conception of the nature of its relationship towards South Eastern Europe, a relationship that has evolved since 1991. The European Union defines South Eastern Europe as Albania, Bosnia-Herzegovina, Croatia, Federal Republic of Yugoslavia (FRY; Serbia and Montenegro), and the Former Yugoslav Republic of Macedonia (FYROM).

The EU regards South Eastern Europe (particularly since 1996) as its 'near abroad'.¹ This chapter illustrates the EU's relationship with South Eastern Europe both by contrasting it with the EU's attitudes towards other regions contiguous to itself and by examining the range of policy instruments the EU has deployed to intervene in the region.

The chapter proceeds via a brief exposition of EU policy towards South Eastern Europe since 1991. It asserts that EU policy towards the region can be divided into three phases: 'Leadership Conceded', 'Engagement through Comparative Advantage', and '(Re)-claiming the EU's "Near Abroad"'. The chapter concludes by critically assessing the degree to which EU policy has been successfully implemented so far and by commenting on the possibilities for the successful implementation of policy.

*172 / Democratic Reconstruction in the Balkans***How the 'Near Abroad' Defined Itself**

The EU has taken some time to develop and clarify the exact nature of the relationship it wants to develop with South Eastern Europe. The primary reason for this is that EU policy towards the region has been driven by events within the region itself. Every twist and turn of the various phases of war fighting, peace making, and of the struggles for political power within and between states in the region since 1991 have, until recently, been events to which the EU has largely reacted in a strategic policy vacuum. Crises are foreign policy events to which the EU is badly placed to respond. Indeed, there appears to be a direct correlation between the depth of a crisis and the extent of atrophy in the EU's foreign policy-making process.

A second-order reason for the EU taking a considerable length of time in defining a clear policy towards South Eastern Europe has been a lack of clear thinking within the EU as to the extent of near-future enlargement of the Union (though the EU is now clearer about this). An important factor in defining the extent of that enlargement has been the elaborate courting ritual that has taken place between the EU and prospective members. The EU has many suitors and has demanded long periods of engagement (and protestations of desire by its suitors) before it will make a firm(ish) commitment to betrothal.² The South East European countries have not yet made the commitments and undergone the transformations that are, in the EU's eyes, the steps which signal the commencement of courtship.

The EU now has a clear and well-trodden route for countries in transition to follow if they wish to be considered members of the EU. Signing a Europe Agreement with the EU is a signal that the EU considers the signatory to be seeking membership of the EU and that the EU, for its part, will help that country to acquire membership (but with no commitment as to a timetable). Signing a Partnership and Co-operation Agreement with the EU means that membership of the EU is not considered a credible proposition.

Signing a Euro-Mediterranean Association Agreement with the EU also indicates that membership is not considered credible. For the EU, it also signifies that the country in question is considered to be part of its 'near abroad'. The EU has a direct interest in the political and economic reform of the signatory and views signing this latter agreement as the best way in which to deal with the security threats the EU believes emanate from that country's region.

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Bilateral agreements with states of the Mediterranean basin, within a multilateral framework, are the building blocks of a wider strategic relationship which the EU is developing with the region.

Current EU policy towards South Eastern Europe is closer to the Mediterranean basin model than to the enlargement model. The EU's *prime motivation* behind its policy towards South Eastern Europe is the neutralization of security threats it perceives exist in the region. In return for having a more developed relationship with the EU, the states of the region have to embark on a political and economic transition which conforms with EU political and economic norms and practices: no progress in transition, no development of the relationship. Embarking upon transition is not a guarantee of membership.

The Evolution of EU Policy towards South Eastern Europe

Phase 1: Leadership conceded

The EU's record in the conflicts that have wracked the Balkans is generally judged to have been inadequate (to put it tactfully).³ Though the European Community/European Political Co-operation (EPC) did put quite a bit of effort into trying to resolve the early conflicts – in Croatia and Bosnia – it was supplanted by first the United Nations and then by the Contact Group on Former Yugoslavia, with the USA, in the end, actually mediating the peace agreement.⁴ (The Contact Group, created in 1994, consists of the USA, Russia, UK, France, Germany, and Italy.) Early attempts by the EU to acquire a leading role for itself in conflict resolution in the Balkans gave way to the 'renationalization' of policy towards the region (institutionalized in the Contact Group) and to conceding leadership in conflict resolution to the USA.

Phase 2: Engagement through comparative advantage

Between 1995 and 1999 the EU conceded that it could not be the prime mover in dealing with security challenges in South Eastern Europe. Up to 1995, as a second-order player in the search for peace in the region, the EU concentrated on activities in which it perceived itself to enjoy a comparative advantage over other institutions. The primary such advantage was a willingness to fund non-military activity: this included providing aid assistance to the region and maintaining civil order in Mostar.

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Following the Dayton peace agreement (November 1995), the Community set up a special programme for reconstruction and rehabilitation in Bosnia-Herzegovina, Croatia, the FRY and FYROM. Building on its experience in the region, the EU has deployed certain instruments in the search for a resolution of the conflict over Kosovo. One crucial instrument has been the Obnova aid programme for Bosnia-Herzegovina, Croatia, the FRY, and FYROM, established in July 1996.⁵ Obnova finances regional co-operation and good neighbourliness programmes, as well as transborder programmes; the rebuilding of infrastructure and other facilities damaged in the fighting; the consolidation of democracy and civil society; the return of refugees; and the integration or reintegration of refugees and former soldiers into working life. ECHO has also provided humanitarian and emergency assistance to the region.

The Union did not intervene in the civil unrest in Albania in 1997; instead, Italy led an *ad hoc* intervention force endorsed by the UN Security Council. The Union was, again, largely absent from the Kosovo conflict; here, the Contact Group mediated, and NATO carried out the actual military intervention. This reflected the Union's general weakness in the realm of defence (in terms of both a willingness and a capacity to use force). The Union has made more of a contribution in former Yugoslavia in the form of applying diplomatic and economic instruments, particularly in the areas of reconstruction and rehabilitation. Unusually, the EU was actually in charge of administering the divided town of Mostar, Bosnia-Herzegovina, from 1994 to 1996. Since the end of the Bosnian war, it has been active in reconstruction in Bosnia-Herzegovina. Its role in Kosovo has been similar. While Kosovo is under a UN civilian administration, the EU is the lead organization in the reconstruction of Kosovo. It also contributes to the areas of humanitarian affairs, civilian administration and institution building.

Between 1995 and 1999 the EU's efforts to involve itself in a grand strategy for the region were timid. The EU moved to help implement the Dayton peace agreement by encouraging stability and good neighbourliness in South Eastern Europe. The European Community Monitoring Mission (ECMM) – unarmed observers originally dispatched to Slovenia and Croatia in 1992, and later also deployed in Bosnia – remained in place in the former Yugoslavia throughout the period (1995–99), with a presence along the borders between the FYROM and Albania, and between Kosovo and Albania.

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The Road to War: the Rebirth of the EU's Regional Strategy towards South East European Countries

Transition to Phase 3: A proto-policy

The application of carrots and sticks is the only possible strategy in the region. But Europe's sticks are actually toothpicks and the carrots are only wizened old ones.

Jonathan Eyal, April 1998⁶

The EU adopted a 'regional approach' to the five South East European countries on 26 February 1996 (after the European Commission had submitted a paper to the Council of Ministers on this matter).⁷ The objective of this approach was to promote and sustain democracy, the rule of law, and respect for human and minority rights, and to relaunch economic activity.

On 29 April 1997 the General Affairs Council of the EU adopted a 'strategy on conditionality': according to this, bilateral relations were to be advanced on the basis of adherence to democratic principles, the rule of law, and human and minority rights. The strategy had three elements:

- granting of autonomous trade measures (ATMs);
- participation in Phare (the EU-funded programme that provides support for the economic and political transition of countries in Central and Eastern Europe); and
- the conclusion of bilateral agreements.

The EU sought to operate this new policy through a process of auditing. The European Commission was tasked with assessing the situation in each of the five countries and reporting to the Council every six months. The EU had embarked upon a process in which it conceived of the region as a single unit in strategic terms but sought to advance policy through bilateral instruments. The absence of a clear regional objective – beyond stability – reflected the uncertainty at this stage of EU policy objectives in the region. In large part this can be explained by the EU relinquishing strategic thinking on the region to the United States.

Commission 'conditionality reports' in April and November 1998 urged the EU to maintain the existing EU policy of not developing closer relations with specific countries (Albania, Bosnia-Herzegovina, Croatia, the FRY, FYROM) due to a lack of progress in meeting the EU's conditions. For both Albania and

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FYROM, ATMs were not an issue – trade co-operation agreements were already in place – nor was the Phare programme. (The Phare programme has been applied to a limited degree in Bosnia for projects related to the implementation of peace agreements.)

The ‘conditionality strategy’ was developed alongside the Process of Stability and Good Neighbourliness in South East Europe, or ‘Royaumont process’. The Royaumont process was launched in December 1995 to accompany the implementation of the Dayton agreement; its purpose was to place a strategy for maintaining peace in Bosnia-Herzegovina within a broader process encompassing the entire region. The Royaumont process was intended to encourage the normalization of relations between the countries concerned, and, above all, to encourage dialogue, contacts, and co-operation at all levels of civil society in the region. The EU would support projects relating to stability, good neighbourliness and civil society. In November 1997, the Council appointed a ‘Royaumont Process Co-ordinator’, responsible for (among other tasks) co-ordinating with other initiatives in the region, identifying and planning projects, and organizing regional and cross-border meetings of different groups in civil society. The process was relaunched in December 1997 by the EU on the back of the new EU strategies. The EU adopted a Common Position on the process in November 1998, which defined the terms of reference for the co-ordinator of the process and indicated that the EU might back concrete projects to support the process.

Despite the holding of a follow-up Royaumont conference in April 1998, the development of the process was overshadowed by the upsurge of violence in Kosovo in early 1998. The EU turned to the use of instruments that it had previously deployed in the region and put its new strategic thinking on hold. In March 1998, the EU adopted a Common Position on applying sanctions on FRY; these would be applied because of ‘the use of force against the Kosovar Albanian Community in Kosovo, [which] represent[s] an unacceptable violation of human rights and put the security of the region at risk’. The sanctions approved were fourfold:

- the embargo on arms exports to the former Yugoslavia was reconfirmed;
- no equipment that might be used for internal repression would be supplied;
- a moratorium was imposed on government-funded export credit support for trade and investment; and

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- no visas were to be issued to senior FRY staff and Serbian representatives responsible for repressive action by FRY security forces in Kosovo.

On 8 June 1998 further sanctions were applied in the form of a new Common Position banning new investments in Serbia. (At the same time the EU was making a distinction in its stance towards Montenegro by offering that republic, following the parliamentary elections in June 1998, the reintroduction of Autonomous Trade Measures.) On 30 June 1998 a Common Position was adopted on a ban on flights between FRY and the EU.

In October 1998 the EU appointed, as its special envoy for Kosovo, Wolfgang Petritsch, the Austrian Ambassador to Belgrade, as Felipe Gonzalez (the EU Special Envoy for Yugoslavia), mediator for the Contact Group, and special representative of the President of the OSCE, was not granted a visa for travel to Yugoslavia.

Petritsch and his US counterpart, Chris Hill, shuttled between Belgrade and Pristina seeking a peace deal as the OSCE monitoring mission (two-thirds of which was drawn from the EU) took up its positions in October 1998. The EU then took a lead in seeking a peace agreement at the negotiations in Rambouillet, France, in February 1999. These failed to resolve the conflict and opened the way to the use of military force in the region.

Transition to Phase 3: The triggers

So far this chapter has focused on a claim about the EU's conception of its relationship with South Eastern Europe. A key factor in this relationship is the link between the EU's role in the region and the roles of other actors. The most pertinent such actor is, of course, the United States. The development of clarity in the relationship which the EU would like to have with South Eastern Europe coincides with the engagement of the United States in the conflict in Kosovo.

The movement of refugees from Kosovo was a key reason for engagement in the conflict by Western governments. The displacement of 25,000 refugees in the week following the break-down of the Rambouillet negotiations, which increased to a total of 65,000 per week thereafter, made the NATO bombing campaign an inevitability. In particular, the refugee movements into neighbouring states affected the attitude of the EU and the USA towards

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Albania and FYROM as concerns grew about the impact of these movements upon the political stability of the two states. The Kosovo air campaign also made clear to European NATO members the disparity in capability between themselves and the USA. Only 2–3 per cent of the personnel under arms in Europe are available for deployment on missions such as KFOR (Kosovo Force) and SFOR (Stabilization Force).⁸ Europeans also lacked longer range transport aircraft, sufficient mid-air refuelling capacity, electronic counter-measures, precision guided munitions, and remote sensing capabilities. As a result, EU leaders were stimulated to rethink questions of military security in an EU context.

Phase 3: (Re)claiming the 'near abroad'

A substantive shift in EU policy towards the region took place on 1 April 1999 when the German SPD-Green government launched a proposal (presented at the General Affairs Council on 8 April) for a Stability Pact for South Eastern Europe.⁹ For the German government a diplomatic initiative was an essential counterpart to its involvement in the military campaign. This wish to have a supplementary strategy to the use of military force (shared by Italy and Greece) was, with the European role in the Rambouillet negotiations in February 1999, part of the new and dramatic play by EU member-state governments for greater European leverage over events in the region.

The centrepiece of the German Stability Pact proposal was the offer of EU membership to the countries of South Eastern Europe. The Stability Pact would be designed to integrate all of the existing regional initiatives into a single framework. Alongside this initiative, the EU was turning the sanctions screw on FRY. On 26 April 1999 it widened and tightened sanctions: among other things, it instituted a ban on petroleum exports to, and private investment in, FRY, travel bans on key members of the regime and their families, and a comprehensive flight ban.

A European Council meeting was specially convened on 14 April to approve the Stability Pact and to hold a conference at which the future of the region was discussed. Ten days later, at the Washington Summit (convened to mark the fiftieth anniversary of the founding of NATO), NATO supported the pact as a part of its own long-term policy towards the region.

The Stability Pact for South Eastern Europe was formally launched by a CFSP Common Position of 17 May 1999. The speed

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of the move from initial proposal to developed policy was the outcome of what commentators have called 'turbo-charged negotiations'.¹⁰ The pact is to be a framework for co-operation involving the EU (including the European Commission), the USA, Russia, the five South East European countries, Turkey, and other countries (such as Japan), in addition to regional and international organizations and the international financial institutions. The objective is to bring peace, stability and economic development to the region. There is a regional 'round-table' on South Eastern Europe which co-ordinates three 'working round tables' on democracy and human rights, economic reconstruction, development and co-operation, and security issues. The working round tables draw up proposals for specific measures to be implemented under the terms of the pact.

The first meeting on the pact took place on 27 May 1999, in preparation for the signing of the Stability Pact by participating countries' foreign ministers on 10 July and the meeting of the Stability Pact at head of state or government level in Sarajevo on 30 July 1999.¹¹ Forty heads of state or government were in attendance; Serbia was not invited. The EU gave itself the role of promoting the launch of the Stability Pact rather than of keeping the initiative under its control. Beyond that, the EU would take responsibility for convening the working groups and for funding the special co-ordinator tasked with the responsibility for the pact. The pact itself was not to have its own implementing structures but would depend on the participants in the process implementing its policies. This was meant to make the countries of South Eastern Europe equal partners in the process.

A key contribution by the EU was to be the development of new contractual relations with the states of the region. With this aim in mind, the Commission proposed, in May 1999, a new kind of contractual relationship between it and the five South East European countries: Stabilization and Association Agreements (SAAs). The objective of the agreements would be to give the countries the prospect of stability and of association with the EU; to support the consolidation of democracy, the rule of law, economic development, and regional co-operation; to establish an institutionalized political dialogue at bilateral and regional levels; to promote trade, investment, economic relations, and development; to provide the basis for co-operation in the field of justice and home affairs; and to provide the basis for co-operation in social, civil, scientific, and cultural fields. The agreements would help bring the region closer to full integration into EU structures;

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however, they would not formally contain a promise of EU membership. They would be different for each country, and whether or not negotiations were opened, and, if so, what their content would be, would depend on that country's compliance with certain political and economic conditions (as specified in the 'regional approach'). The Commission communication of May 1999 sets out the following order of events: a report on the feasibility of opening negotiations on an SAA will be followed by the drafting of negotiating directives.

The first country to negotiate a Stabilization and Association Agreement was FYROM; the agreement was initialled in November 2000. Negotiations commenced with Croatia in late 2000. In November 1999, the Commission had decided that Albania was not yet ready to start negotiations on an SAA: it had first to improve its performance in terms of reforming the economy and enforcing the rule of law.

**The New Stabilization and Association Process:
The EU's Role after the Stability Pact**

The Stability Pact lays down a framework for co-operation between the EU and the other participants (listed above). The aim of the pact, which all participants support, is to bring peace, stability and economic development to the region. The pact sets out the principles and areas of action towards which, it is hoped, the participants in the pact will adopt a common approach. It specifies the role to be played by each party; the EU's role is to focus on the development of programmes to underpin democracy, stimulate the economy, and foster contractual relations within the region.

The organization of the pact was placed in the hands of the special co-ordinator, Bodo Hombach, appointed in July 1999. Hombach chairs a regional round table on South Eastern Europe that is a forum for ensuring achievement of the Pact's objectives (he makes regular progress reports to the OSCE) and for co-ordinating the three 'working round tables'. These round tables draw up proposals for specific measures to be implemented under the pact. The pact also stresses the importance of co-ordination between the World Bank and the European Commission on the formulation of a strategy for regional development and on the organization of donor conferences. The first meeting of the 'regional round table' in September 1999 concluded a work-plan for the 'working round tables'.

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The 'regional approach', the Stability Pact, and the new Stability and Association Agreements form the foundations of the *Common Strategy on the Western Balkans* adopted at the European Council.

A crucial follow-up to the Stability Pact summit meeting in Sarajevo was the donor conference for South Eastern Europe, held in Brussels on 29–30 March 2000 with representatives of 44 states and 36 international organizations present. The conference was devoted to the funding of regional projects for the next twelve months.¹² The participants agreed to fund Euro 2.4 billion worth of quick-start reconstruction, democratization and security projects: the EU Commission pledged Euro 531.5 million; the EU Member States Euro 552.5 million; the USA Euro 80.56 million;¹³ and Canada Euro 50.83 million. All these pledges are spread over four categories corresponding to the 'working round tables' of the Stability Pact.¹⁴ 70–80 per cent of this consists of donations and 20–30 per cent of loans.¹⁵ The countries from the territories concerned are Kosovo, Montenegro, Bosnia-Herzegovina, Macedonia, Albania, Croatia, Bulgaria, and Romania. It was originally anticipated that Serbia would benefit once it had established a democratic political regime.

Serbia: From Outsider to Participant

The change of government in Croatia in early 2000, following the death of Franjo Tudjman, left Serbia, with Slobodan Milošević at the helm, as the pariah regime of the region. The events in Yugoslavia of September 2000 onwards altered the situation entirely. On 9 October 2000 the EU issued an invitation to FRY to negotiate a Stabilization and Association Agreement. An important symbolic end of the FRY's isolation was the first EU–Balkans summit, held in Zagreb on 24 November 2000. The summit had been called before Kostunica became president of the FRY, but, following the change of leadership in Belgrade, he was invited to it. The summit brought together the fifteen EU member states, Slovenia, Albania, FYROM, Bosnia-Herzegovina, Croatia, and FRY.

The key theme of the summit was regional reconciliation and co-operation. The EU laid out a clear package deal: if the region established co-operation arrangements among its members, EU political and financial support would be forthcoming. The prospect of accession to the EU was reaffirmed together with the promise of a new aid programme of Euro 4.65 billion in 2000–06: this was CARDS – Community Assistance for Reconstruction, Democrat-

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ization and Stabilization. Alongside the financial support was the promise of exceptional trade preferences for industrial and agricultural products exported to the EU market. The EU policy towards the region had reached a level of maturity familiar to other regions: a global trade and aid package coupled to a commitment to developing an institutionalized relationship between the EU and the region.

Conclusion

The EU policy described above is a manifestation of a procedural approach that the EU takes to the formation, and implementation, of policy towards a region. The argument in this chapter is that, underlying these procedural elements, there has been a shift in the role that the EU gives itself in this particular region. The Stability Pact represents a role shift: the EU now regards itself as having a near abroad that it cannot ignore.

The general conditions that the EU applies to all South East European countries if they wish to have a more developed relationship with the EU are: respect for democratic principles, human rights, the rule of law, and minorities; the implementation of market economic reforms; and a readiness to engage in cross-border co-operation. Furthermore, if negotiations on contractual relations are to take place, opportunities for displaced persons and refugees to return to their places of origin must be made available, the country in question must comply with obligations under the peace agreements (including co-operation with the International Tribunal), and there must be no harassment of minorities by public authorities. Specific conditions also apply to certain countries, such as those stemming from obligations under the peace agreements: for example, functioning institutions must be established in Bosnia-Herzegovina, and there must be real dialogue on the status of Kosovo. Although the setting of these conditions is an important act in itself, the EU is not in a direct position to ensure that they are implemented. The EU will have to recognize this limitation in the formulation and implementation of its policy towards the region.

Currently, only two South East European countries have agreements with the EU: Albania and FYROM. Since 1992, a trade and co-operation agreement has been in force with Albania. In 1998, the Union concluded a co-operation agreement with FYROM. In the absence of contractual relations, the Community has granted autonomous trade preferences to countries that meet certain

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economic and political conditions. Bosnia-Herzegovina and Croatia have benefited from these preferences, but FRY has not. Clearly the tools that the EU has at its disposal are being utilized either not fully or without sufficient urgency. Improved terms of trade would make a significant difference.

EU financial assistance under the Phare programme has been made available for South East European countries that meet certain political and economic conditions. FYROM and Albania have received assistance, but Bosnia has only been eligible to receive funds for projects in direct support of the peace agreements (such as the building of cross-entity links and aiding refugee return). Croatia was suspended from the Phare programme in 1995. FRY is considered ineligible. The EU financial contribution to the region in the recent past has, in other words, been minimal. It is of crucial importance that this situation improves promptly.

The EU itself has been hamstrung in its policy implementation in the region by its own poor co-ordination and communications, and by the bureaucratic obstacles it has created. In a joint report, EU High Representative Javier Solana and the EU's External Relations Commissioner, Chris Patten, pointed out the Union's failings in this regard.¹⁶ The United Nations Economic Commission for Europe has criticized the large gap between funding pledges and actual disbursements by all donors; and has strongly criticized the EU for not taking into account the importance of national programmes to further the regional integration that the Stability Pact is intended to promote.¹⁷ Reform of EU co-ordination and implementation procedures is therefore necessary to give effect to the EU's aspirations.

Notes

1. This label has also been applied to Central and Eastern Europe. See, for example, C. Piening, 'The EU's Near Abroad: The European Neighbours', in C. Piening, *Global Europe: The European Union in World Affairs*, Boulder, CO/London, Lynne Rienner, 1997.

2. Would-be members of the EU are Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey.

3. For analyses of the period 1991-94, see A. Cafruny, 'The European Union and the War in the Former Yugoslavia: The Failure of Collective Diplomacy', in A. Cafruny and P. Peters (eds), *The Union and the World: The Political Economy of a Common European Foreign Policy*, The Hague, Kluwer Law, 1998; and G. Edwards, 'The Potential and Limits of

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the CFSP: The Yugoslav Example', in E. Regelsberger, P. de Schoutheete de Tervarent and W. Wessels, *Foreign Policy of the EU: From EPC to CFSP and Beyond*, Lynne Rienner, 1997.

4. EPC is the process by which the EC member states sought to coordinate their national foreign policies from the early 1970s. The European Community also has a trade policy which it implements through trade and aid relationships. The EC transformed itself into the EU in November 1993 and EPC has become CFSP (Common Foreign and Security Policy).

5. Obnova was established by Council Regulation (EC) No. 1628/96 of 25 July 1996.

6. 'Force of Persuasion in the Balkans', *European Voice*, 23–29 April 1999, p. 12.

7. *Agence Europe*, February 1996.

8. KFOR was established in order to ensure compliance with UN Security Council Resolutions (UNSCR 1244) and to monitor verification of and compliance with the terms of the 9 June 1999 Military Technical Agreement signed by NATO and FRY military forces.

9. This is not the first Stability Pact that the EU has devised. The first Stability Pact (also known as the 'Balladur Initiative') was formulated for Central and Eastern Europe in 1995. This was one of the EU's first Common Foreign and Security Policy joint actions. For details, see T. Ueta, 'The Stability Pact: From the Balladur Initiative to the EU Joint Action', in M. Holland (ed.), *The Common Foreign and Security Policy: The Records and Reforms*, London, Pinter, 1997.

10. "Turbo-charged negotiations": the EU and the Stability Pact for South Eastern Europe', *Journal of European Public Policy*, 7, 5, pp. 767–86.

11. The twenty-nine initial participants in the Stability Pact: the 15 EU Member States, Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Hungary, Romania, the Russian Federation, Slovenia, FYROM, Turkey, the USA, the European Commission, the OSCE Chairman in Office, and the Council of Europe. Eleven facilitators and five regional initiatives also support the pact and participate in its structures: Canada, Japan, the UN, the UNHCR, NATO, the OECD, WEU, IMF, World Bank, the EIB, EBRD, the Royaumont Process, Black Sea Economic Co-operation, the Central European Initiative, the South East Europe Co-operation Initiative, and the South Eastern Europe Co-operation Process.

12. *Agence Europe*, 29 March 2000, no. 7686.

13. *European Voice*, 6–12 April 2000, vol. 6, no. 14.

14. *Agence Europe*, 12 April 2000, no. 7696.

15. *Agence Europe*, 31 March 2000, no. 7688, p. 6.

16. 'Report Highlights EU Failures in Balkans', *European Voice*, 23–29 March 2000, p. 2.

17. Economic Commission for Europe, *Economic Survey of Europe*, 2000, No.1, Geneva, UN Publications, 2000.