

No. 11

**TRONDHEIM STUDIES
ON EAST EUROPEAN CULTURES & SOCIETIES**



Vjeran Pavlakovic, Sabrina P.Ramet, and Philip Lyon

SOVEREIGN LAW VS. SOVEREIGN NATION

The Cases of Kosovo and Montenegro

October 2002

Vjerran Pavlakovic is a doctoral candidate in the department of History at the University of Washington, Seattle. **Sabrina P. Ramet** is a professor of political science at the Norwegian University of Science and Technology, Trondheim. **Philip Lyon** is graduated student in the Department of History at the University of Maryland, College Park.

© The authors and the Program on East European Culture and Societies, a program of the faculty of Arts. Norwegian University of science and Technology.

ISSN 1501-6684

Trondheim studies on East European Cultures and Societies

Editors: Knut Andreas Grimstad, Arne Halvorsen, Håkon Leiulfstrud, György Petèri

We encourage submission to the *Trondheim Studies on East European Culture and Societies*. Inclusion in the series will be based on anonymous review. Manuscripts are expected to be in English (exception is made for Norwegian Master's and Ph.D. thesis) and not exceed 150 double spaced pages. Postal address for submission: Editors, Trondheim Studies on East European Cultures and Societies, Department of History, NTNU, N-7491 Trondheim, Norway.

For more information regarding the Program on East European Culture and Societies and our paper series, visit our WEB-site at:

<http://hf.ntnu.no/peecs/peecs.htm>

SOVEREIGN LAW VS. SOVEREIGN NATION:
The cases of Kosovo and Montenegro

**Vjeran Pavlaković, Sabrina P. Ramet,
and Philip Lyon**

TABLE OF CONTENTS

Albanian—Serb rivalry in Kosovo: Realist and universalist perspectives on sovereignty – <i>Vjieran Pavlaković and Sabrina P. Ramet</i>	1
Montenegro and Yugoslavia: Disassociation, Negotiation, Resolution? – <i>Philip Lyon</i>	43
The uses and abuses of sovereignty (a conclusion) – <i>Sabrina P. Ramet</i>	76

ALBANIAN AND SERB RIVALRY IN KOSOVO:

Realist and universalist perspectives on sovereignty

Vjerran Pavlaković and Sabrina P. Ramet

The people of Kosovo have a right to self-determination. They [enjoy] – just like the Croatians and the Slovenians did, and just like those in Bosnia who wanted to be not under Milošević’s heel or the Serbians’ heel, and just like the people of the United States had a right as we declared ourselves as in 1776, the right to dissolve the political bonds.

- U.S. Representative Dana Rohrabacher (R-Calif.)¹

...just imagine the outcry if, during our civil war, Great Britain would have invaded the North to “punish” Abraham Lincoln for his militant defense of the Union. Kosovo is a part of Yugoslavia and Belgrade has every right to defend its national borders.

- Bill Hughes²

In an essay originally published in 1960, Hans Kelsen, the brilliant if controversial specialist in international law, held that international law and the laws of any given state cannot both be primary; one must take precedence over the other.³ If, Kelsen argued, one posited the primacy of international law, then there can be no room for state sovereignty as such.⁴ But if, on the other hand, one chooses to affirm the primacy of state sovereignty, then, for Kelsen, one

¹ . In testimony at the House Committee on International Relations (10 March 1999), in Federal Document Clearing House, Inc., *FDCH Political Transcripts* (10 March 1999), on *Lexis-Nexis Congressional Universe*, p. 29 or 38, bad syntax in original.

² . “Warhawks at 501 Calvert Street”, from *The Baltimore Press* (5 May 1999), reprinted in *CounterPunch*, at www.counterpunch.org/hughes.html, punctuation modified.

³ . Hans Kelsen, “Sovereignty and International Law”, in *The Georgetown Law Journal*, Vol. 48, No. 4 (Summer 1960), reprinted in W. J. Stankiewicz (ed.), *In Defense of Sovereignty* (New York: Oxford University Press, 1969), pp. 117—118.

⁴ . *Ibid.*, p. 121.

must accept that this entails acceptance of the maxim "...that the state is not subject to a legal order superior to its own national law."⁵

Kelsen tried to resolve this dilemma by holding that the state's subscription to international law was voluntary; in this way, he hoped to salvage the binding character of international law without sacrificing the concept of state sovereignty. But the difficulties do not end there. After all, the notion of popular (or national) sovereignty may be marshalled against that of state sovereignty. If the people are sovereign, or so Locke held, then it would follow that

...if a long train of Abuses, Prevarications, and Artifices, all tending the same way, make the design visible to the People, and they cannot but feel, what they lie under, and see, whither they are going: 'tis not to be wonder'd, that they should then rouse themselves, and endeavour to put the rule into such hands, which may secure to them the ends for which Government was at first erected.⁶

The doctrine of state sovereignty faces a second challenge, thus, from those who would make the People the ultimate repository of sovereign authority.⁷

Jacques Maritain has offered a Gordian solution, by declaring the concept of state sovereignty "intrinsically wrong", by which he means *morally* wrong.⁸ Tracing the doctrine of state sovereignty to the rise of absolute monarchies, Maritain treats the rival notion of popular sovereignty as a bastard extrapolation from the false (for him) doctrine of state sovereignty; for him, the doctrine of popular sovereignty is, moreover, a contradiction in terms.⁹ Ultimately, for Maritain, neither international law nor state sovereignty can be said to possess

⁵ . Quoted in W. J. Stankiewicz, "In Defense of Sovereignty: A Critique and an Interpretation", in Stankiewicz (ed.), *In Defense of Sovereignty*, p. 28.

⁶ . John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1960), 2nd Treatise, para. 225, ll. 5—11, p. 415, original spelling.

⁷ . Yet a third challenge has been raised recently by champions of the sovereign rights of Great Apes. See Robert E. Goodin, Carole Pateman, and Roy Pateman, "Simian Sovereignty", in *Political Theory*, Vol. 25, No. 6 (December 1997).

⁸ . Jacques Maritain, "The Concept of Sovereignty", in Stankiewicz (ed.), *In Defense of Sovereignty*, p. 42.

⁹ . *Ibid.*, pp. 49—50, 55.

the moral credentials necessary to constitute the primary point of reference determinative of both national and international norms. Maritain locates this point of reference, however, in Natural Law (Universal Reason) from which, he argues, the right of people to self-governance proceeds.¹⁰ But *which* people? And within which territorial borders? If the case of Serbia may be adduced, shall such right be restricted to the people of the Republic of Serbia taken as a whole, or may specific groups, aggregated regionally, as, for instance, in Kosovo, also lay claim to such right, even if *against* the declared right of the whole?

In the chapter which follows, we shall show how rival understandings of sovereignty have been reflected in rival positions in the dispute over Kosovo and argue that where Belgrade's official line has adhered to traditional principles of Hobb'sian "realism", with the Albanians making an appeal to a nationalist version of the doctrine of popular sovereignty, stability and respect for human rights can *only* be grounded on the foundation of political legitimacy and an understanding of sovereignty compatible with the teachings of the sixteenth-century philosopher Bodin, who "...set out to combat the sceptical trends of his age and to find a new basis of divine and natural right among human beings,"¹¹ in the process setting certain limits to the authority of the sovereign. We shall begin by briefly tracing the development of the idea of sovereignty, then look at how arguments about sovereignty have figured in the debates surrounding Kosovo, examine the historical roots of the independence movement among Kosovar Albanians, and finally, outline the political and economic conditions within the province, as well as the reaction of both the Belgrade government and the international community to the Albanians' political strivings, concentrating especially on the years 1989—present.

¹⁰ . *Ibid.*, p. 60.

¹¹ . D. Engster, "Jean Bodin, Scepticism and Absolute Sovereignty", in *History of Political Thought*, Vol. 17, No. 4 (Winter 1996), p. 478.

Claims about sovereignty

In a recent work, Stephen Krasner has argued that the norms of sovereignty should not be viewed as guiding principles of the international order but as “cognitive scripts” which are “instrumentally useful” to heads of state.¹² On this view, states simultaneously want to preserve norms of sovereignty and violate them when it serves their interests to do so. This “instrumentalist” view is set against the “constructivist” view of those who argue that states attune their behavior to generalized notions of appropriateness.

The contemporary debate between instrumentalists and constructivists mirrors, up to a point, a much older debate between those who, like Jean Bodin (1529/30—1596), have sought to set moral limits to the authority of the secular sovereign,¹³ and those who, like Thomas Hobbes (1588—1679), have emphasized instead the supremacy of the sovereign, entrusting to him even the authority to interpret Divine and Natural Law for the body politic.¹⁴ For Bodin, the authority of the sovereign is, of necessity, limited by *leges naturae et divinae* (Natural and Divine Law), by international law, and by the laws of the realm, if only because sovereign authority derives from those very legal and normative frameworks.¹⁵

But for Hobbes, these appeals to divine and natural law disappear into thin air on the argument that the law does not interpret itself. It follows that someone must have the sovereign power to interpret those laws; indeed, for Hobbes, *sovereignty* itself consists, in part, in the authority to serve as the ultimate arbiter

¹² . Stephen D. Krasner, *Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999), as summarized by Jack Goldsmith in a review essay for *Stanford Law Review*, Vol. 52, Issue 4 (April 2000), on *UW Expanded Academic ASAP*, p. 12.

¹³ . See Jean Bodin, *On Sovereignty*, ed. and trans. by Julian H. Franklin (Cambridge: Cambridge University Press, 1992).

¹⁴ . Thomas Hobbes, *On the Citizen*, ed. by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998).

¹⁵ . Max Adams Shepard, “Sovereignty at the Crossroads: A Study of Bodin”, in *Political Science Quarterly*, Vol. 45, No. 4 (December 1930), pp. 587—588. See also Engster, “Jean Bodin, Scepticism”, pp. 475—477.

of Divine and Natural Law. By Hobbes' time, the earlier aspirations of the Church to such authority already seemed anomalous, while Hobbes had no patience with claims on behalf of popular sovereignty. For Hobbes, no group of citizens can ever constitute more than a mere "crowd" and, Hobbes argues, "a crowd is not a natural person" and, therefore, does not enjoy specific rights.¹⁶

Historically, of course, the notion of sovereignty had its incunabulum in theories of divine law, such as that of Francisco de Vitoria, a legal scholar active in the early sixteenth century, who argued that sovereign power was derived from, validated by, and ultimately contingent upon its conformity with divine law.¹⁷ Yet, within the constraints set by divine law, Vitoria nonetheless salvaged a strong concept of state sovereignty, arguing that "the State may in no wise be deprived of this power to protect citizens and to guard against every injury from its own citizens or from aliens...[and even] if all the citizens should agree to dispense with these powers...the[ir] agreement would be null and void, being contrary to natural law."¹⁸ The concept of sovereign assumed a more formal character in connection with the development of the concept of the divine rights of kings and designated the natural and inalienable right of the king to rule society from above.¹⁹ It gained force from the Treaty of Westphalia (1648) and associated covenants, in the course of which the sovereign's authority in the religious sphere was affirmed and demarcated under the principle, *cuius regio, eius religio*.²⁰ But the subsequent development of theories of sovereignty has failed to establish a single uniform standard for assessing claims of sovereignty or demarcating the rights of sovereign authority. Instead, we have inherited three alternative views: *state sovereignty*, tracing its heritage to Hobbes,

¹⁶ . Hobbes, *On the Citizen*, pp. 76—77.

¹⁷ . Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), p. 128.

¹⁸ . Francisco de Vitoria, *De Potestate Civili* (1527/28), as quoted in Bartelson, *A Genealogy*, p. 129.

¹⁹ . Maritain, "The Concept of Sovereignty", pp. 49—50.

emphasizing the alleged rights of recognized governments and regimes, and expressed most recently in the claims registered on behalf of Slobodan Milošević's alleged rights to formulate and pursue such policies in Kosovo as he saw fit, without regard to life or limb; *popular sovereignty*, tracing its heritage to John Locke (1632—1704),²¹ emphasizing the alleged rights of people to challenge their government and, in certain circumstances, to secede from the jurisdiction of their government or overthrow it altogether, and expressed in arguments in favor of Kosovar Albanian separatism; and what we may call *relational sovereignty*, which may trace its heritage to Bodin and which locates sovereignty in the relationship between government and governed but which also factors in the moral law -- as understood at the time -- as a component of legitimate authority.²² On the relational view, thus, one must, in the first place, distinguish between legitimate and illegitimate authority, and hence also between legitimate and illegitimate sovereignty.

These three rival theories of sovereignty have underlain the rival arguments registered on behalf of the Milošević regime, the separatist aspirations of Kosovo's Albanians, and solutions premised on the reconstruction of local politics along classical liberal lines.

Although the dispute between Serbs and Albanians over Kosovo may be traced at least as far back as the late nineteenth century, it assumed the form of a clash of formal claims to *sovereignty* on 19 October 1991, when the underground Assembly of Kosova met clandestinely and adopted a decree, declaring that "the Republic of Kosova is a sovereign and independent state."²³

²⁰ . See Leo Gross, "The Peace of Westphalia, 1648—1948", in *American Journal of International Law*, Vol. 42, No. 1 (January 1948).

²¹ . See John Locke, *Two Treatises of Government*, critical ed. (New York: Cambridge University Press, 1960).

²² . See John Hoffman, *Sovereignty* (Minneapolis: University of Minnesota Press, 1998); also Sabrina P. Ramet, "Evil and the Obsolescence of State Sovereignty", in *Human Rights Review*, Vol. 1, No. 2 (January—March 2000).

²³ . Quoted in *New York Times* (3 November 1991), p. 17, on *Lexis-Nexis Academic Universe* (hereafter, LNAU).

The subsequent recognition of the declaration by neighboring Albania²⁴ and election, the following May, of Dr. Ibrahim Rugova as President of the Republic of Kosova²⁵ consolidated the Albanian counterclaim. From then until the resignation of Rugova's government on 2 February 2000,²⁶ in the wake of the NATO aerial campaign against the Federal Republic of Yugoslavia (FRY) in spring 1999, this underground government served as the vessel for Albanian claims to sovereignty.

Historical sources of rival claims

Many of the problems in present-day Kosovo have their origin in the long, turbulent history of this region in the Balkans. However, the history of Serbs and Albanians did not make the current problems inevitable, but the specific configuration of problems and pattern of resentments must be traced to policies pursued in the first and second Yugoslavias. Moreover, the chauvinistic interpretation of this historical record by both sides has taken a prominent place in any discussion of the future of Kosovo. Since the debate is so steeped in historical claims, it is crucial that past developments be reviewed and assessed. The critical issue at the heart of these events (which escalated from demonstrations, riots, and police repression to a full blown guerrilla war and bombing campaign by the world's most powerful military alliance) is the desire for independence by Kosovo's Albanians, i.e., political, cultural, and economic sovereignty for the Albanian "nation" living in Kosovo. This desire does not originate from an "ancient hatred" of Serbs or from a plan to create a Greater Albania, but rather from the failure of the Yugoslav – and ultimately Serbian – government to create a legitimate system accepted by all of Kosovo's citizens. The Serbian political leadership (first under the aegis of the Socialist Federal

²⁴ . *Agence France Presse* (22 October 1991), on LNAU.

²⁵ . Croatian Radio (Zagreb), 25 May 1992, Albanian service, trans. in *BBC Summary of World Broadcasts* (27 May 1992), on LNAU.

Republic of Yugoslavia [SFRY] and later within a greater Serbian state)²⁷ has been determined to maintain sovereignty over as much territory as possible, relying on force as the primary method for resolving any crisis within its territory.²⁸

Serbs and Albanians have lived in this region of the Balkans for well over one thousand years; the Albanians claim to be descended from the Illyrians, some of the earliest known inhabitants of the Balkan Peninsula. However, the Albanian tribes, scattered in a mountainous terrain at the intersection of the ancient world's empires and divided by religious and linguistic differences, were never able to unify sufficiently to form a state.²⁹ In contrast, the Serbs (Slavs who settled in the Balkans in the seventh century) formed a large kingdom, which reached its greatest extent under Emperor Stefan Dušan (1308-1355). The territory under his control extended from Belgrade in the north to portions of modern day Greece in the south, and encompassed parts of Bosnia and all of Kosovo and Albania. One of the most significant developments during this period was the establishment of the Serbian Orthodox Church patriarchate of Peć in 1557, which was followed by the construction of numerous churches and monasteries throughout the region. The Ottomans abolished the patriarchate of

²⁶ . *Illyria* (The Bronx), 4—7 February 2000, p. 1.

²⁷ The 1990s witnessed the collapse of the SFRY as the country's constituent republics (first Croatia and Slovenia in 1991, followed by Bosnia-Herzegovina and Macedonia in 1992) declared independence after a decade of economic crisis, the disintegration of the communist system, and resurgence of nationalism. The Yugoslav National Army (JNA) initially fought to preserve the territorial integrity of the SFRY, but under the guidance of the Serbian leader Slobodan Milošević the war degenerated into an attempt to secure as much territory as possible for the Serbian nation. The so-called "rump" Yugoslavia (Federal Republic of Yugoslavia – FR Yugoslavia) consists of Serbia and Montenegro, although the continued existence of this entity is questionable since several regions have expressed a desire to separate.

²⁸ While many classical definitions of sovereignty specify the monopoly of force by the sovereign, John Hoffman argues that the use of force is an illegitimate action on the part of the government. He offers coercion as an alternative to force, since legitimacy involves a relationship between the government and the people, which is destroyed by violence. See Hoffman, *Sovereignty*, pp. 47—49.

²⁹ See Alain Ducellier, "Genesis and Failure of the Albanian State in the Fourteenth and Fifteenth Centuries," in Arshi Pipa and Sami Repishti (eds.), *Studies on Kosova* (New York: Columbia University Press, 1984), p. 8.

Peć in 1766, however, but the rich heritage remained.³⁰ This vast religious heritage in Kosovo is one of the reasons why Serbs view this province as an integral part of Serbia. Dušan's empire quickly broke apart after his death, due to both the weakness of his successor and the rise of a new power in the Balkans, the Ottoman Empire.

The political landscape of the Balkans underwent a colossal transformation as the Ottoman Empire expanded northwards in the fourteenth century, resulting in massive migrations, the destruction of the native nobility, and, over time, widespread conversions to Islam.³¹ The independent Serbian and Bosnian medieval kingdoms disappeared, and while the Battle of Kosovo Polje (1389) was not a decisive victory for the Ottomans, it was indicative of the weaknesses of the Balkan Christian states in resisting Ottoman expansion. Following the establishment of Ottoman control, the population of Kosovo fluctuated as Serbs adopted Albanian names and language (and vice-versa), people of various ethnicities intermarried, and Serbs emigrated north while Albanian populations settled into areas emptied by warfare.³² While the reasons and exact numbers behind the transformation of Kosovo's population are still contested, by the twentieth century the overall trend was a decrease in the Serbian population and the steady growth of the Albanian population.³³ Thus, the two claims for sovereignty in Kosovo developed out of historical circumstances: one argument

³⁰ . See discussion in Branislav Djurjiev, *Uloga crkve u starijoj istoriji Srpskog naroda* (Sarajevo: Svjetlost, 1964).

³¹ . See discussion in Noel Malcolm, *Bosnia: A Short History* (New York: New York University Press, 1994).

³² For a detailed history of this time period, see Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998), pp. 105—108.

³³ Serbs and Albanians are not the only ethnic groups in Kosovo, but people identifying themselves as Muslims, Gypsies, Turks, and others counted for less than 10 per cent of Kosovo's population according to the 1991 census. See Julie A. Mertus, *Kosovo: How Myths and Truths Started a War* (Berkeley and Los Angeles: University of California Press, 1999), p. 316.

based on the existence of a historical state,³⁴ and the other relying on the reality of the contemporary demographic structure of the province.

From the fifteenth until the twentieth century, Kosovo was part of the Ottoman Empire, and the last territory of the former Yugoslavia to be “liberated” from Turkish rule. The majority of the Albanian population converted to Islam during this period, while the Serbian national consciousness was kept alive through the language and folklore of the Serbian Orthodox Church, which played an important administrative role under the Ottoman *millet* system. Even though the period of Ottoman rule was not without conflict, the various religious and ethnic communities generally lived together peacefully. Many Albanians even helped maintain and protect Serbian cultural monuments, one of the foundations of Serbian claims on this territory. While nominally loyal to the Sublime Porte, local Albanian leaders were often involved in revolts against centralized Turkish rule, which were then crushed by the Sultan’s armies.³⁵ This tradition of military resistance to central authority and guerrilla warfare would continue in Kosovo as the Ottoman government was replaced by Serbian monarchist and later Yugoslav communist regimes. The Serbian peasantry was also involved in resistance to the Ottoman Empire, particularly when the Ottomans were fighting their main foe in Europe, the Habsburg Empire. The participation of the local Orthodox population in military campaigns alongside an invading Austrian army in the late seventeenth century resulted in one of the greatest emigrations of Serbs from Kosovo, the *Velika Seoba* (Great Migration), led by Patriarch Arsenije III Crnojević in 1690. After

³⁴ The significance of the territorial boundaries of Dušan’s empire is reflected, for example, in the choice by contemporary Serbian historians, writing on contemporary issues in Kosovo, to include as the only map of the region one which shows the greatest territorial expansion of medieval Serbia. The borders of the Autonomous Province of Kosovo (established in 1946), or even the SFRY were not shown, despite the bulk of the book addressing events of the twentieth century. See Alex N. Dragnich and Slavko Todorovich, *The Saga of Kosovo: Focus on Serbian-Albanian Relations* (Boulder, CO: East European Monographs, 1984).

³⁵ Tim Judah, *Kosovo: War and Revenge* (New Haven, CN: Yale University Press, 2000), p. 11.

the Austrian army retreated, some 30,000 Serbian families, fearing reprisals by Ottoman forces, fled north and were resettled in the border regions of the Habsburg Empire, chiefly in the Vojvodina and the Croatian Military Frontier (*vojna krajina*).³⁶ This event is cited by Serbian historians as the moment when the demographic balance of Kosovo was tipped permanently in favor of Albanians, and the reversal of this trend would become a central goal of all subsequent Serbian policy regarding Kosovo, eventually culminating in the settling of Serbian colonists and the forceful expulsion of Albanians throughout the twentieth century. Yet, according to Serb historians, pressures on local Serbs continued to the last days of Ottoman rule, with some 150,000 Serbs allegedly being driven out of Kosovo between 1878 and 1912.³⁷

By the nineteenth century, the Ottoman Empire was increasingly unable to control its border regions, and in the 1820s a small Serbian territory (the area of the Paşalik of Belgrade) was able to achieve a degree of autonomy after waging war against the Ottoman state.³⁸ As the nascent Serbian state continued to expand – receiving official independence with the Treaty of Berlin (1878)³⁹ – the ultimate goal of the leading Serbian politicians was to recover all of Dušan’s medieval kingdom, particularly Kosovo. This was finally realized during the course of the two Balkan Wars (1912-1913), when Serbia, Montenegro, Greece, and Bulgaria first attacked the Ottoman Empire, and then fought each other over

³⁶ Noel Malcolm has challenged many of the traditional accounts of this event, arguing that not all of the Serbian refugees actually fled from Kosovo (many came from other areas of Serbia proper), the numbers usually given (30,000 families) are from only one source and are probably higher than the actual wave of emigration, and many of the volunteers fighting on the side of the Austrians were in fact Albanians. See Malcolm, *Kosovo*, pp. 139–162.

³⁷ . Milija Šćepanović, “The Exodus of Serbs and Montenegrins 1878—1988”, in *Kosovo: Past and Present* (Belgrade: Review of International Affairs, 1989), p. 146.

³⁸ For an excellent overview of Serbia’s struggle for national liberation, see Barbara Jelavich, *History of the Balkans: Eighteenth and Nineteenth Centuries* (Cambridge: Cambridge University Press, 1983).

³⁹ The Albanians were one of the last European peoples to develop a national consciousness, and it was at the meeting of the League of Prizren in 1878 – in response to the Great Powers determining the borders with the Treaty of San Stefano – that a national program was outlined for the first time by an all-Albanian political organization.

the division of the conquered territory.⁴⁰ The Ottomans were driven from Kosovo and a Montenegrin army captured Scutari after a long siege on 23 April 1913. But, thanks to the insistence of Austria-Hungary, Italy, and Germany, the Serbs were compelled to relinquish certain Albanian-inhabited territories which they had claimed in an earlier treaty with Bulgaria, while the Great Powers forced the Montenegrins to evacuate Scutari.⁴¹ The Great Powers then accorded recognition to a truncated Albanian state, within borders which satisfied no one – not the Albanians, not the Serbs, not the Montenegrins, and not the Greeks.

Following the arrival of the Serbian army, reprisals were carried out against pro-Ottoman Albanians and others opposed to Serbian occupation, setting off another episode of emigration from Kosovo, this time of Muslims. Martial law was declared on the pretext of liquidating “bandits”, but often this resulted in entire villages being destroyed and the inhabitants deported.⁴² However, Serbia was not able to hold on to Kosovo for very long, because of the outbreak of the First World War and the defeat of the Serbian army in 1915. The remains of that army, along with thousands of civilians, retreated through the mountains of Montenegro and Kosovo in the middle of winter in order to be evacuated by the Allies off of the Albanian coast. In the process, there was a massive loss of life due to harsh conditions, disease, and attacks from Albanian

⁴⁰ Serbia acquired Kosovo, parts of Macedonia, the Sandžak of Novi Pazar (giving Serbia a common border with Montenegro), and northern Albania, which it was later forced to abandon when pressured by the Great Powers, who created an Albanian state as part of *realpolitik* policy-making in the region. A dispute over the division of Macedonia led to the second Balkan War, involving Serbia, Montenegro, and Greece in a coalition against Bulgaria, whose overextended armies were quickly defeated. News of atrocities committed against civilians prompted an investigation by international observers, but this report was quickly overshadowed by the catastrophe of the First World War.

⁴¹ . Charles and Barbara Jelavich, *The Establishment of the Balkan National States, 1804—1920* (Seattle: University of Washington Press, 1977), p. 219; L. S. Stavrianos, *The Balkans since 1453* (New York: Holt, Rinehart & Winston, 1958), pp. 536—538; and Branko Komatina, *Jugoslovensko-Albanski odnosi 1979—1983. Beleške i sećanja ambasadora* (Belgrade: Novinsko-izdavačka ustanova Službeni list SRJ, 1995), p. 12.

⁴² Malcolm, *Kosovo*, p. 257.

guerrilla fighters who harassed the retreating army.⁴³ This tragic retreat, through an area already symbolically important to Serbian identity, contributed further to the Serbian sense of victimization, which would affect post-war politics in Kosovo as well as throughout the new state created after the First World War, the Kingdom of Serbs, Croats, and Slovenes.⁴⁴ Since Serbia had been on the side of the Allies during the war, all of the territory claimed by the Serbian government was incorporated into the new state, despite the policy of national self-determination supposedly promulgated by American president Woodrow Wilson. The majority of the Albanian speaking population was therefore divided between two countries, Albania and Yugoslavia, the latter of which was inhabited overwhelmingly by Slavic speakers. Despite efforts by some segments of Kosovo's Albanian population to integrate into Yugoslav society, during the twentieth century the two dominant political goals have been either union with Albania or – as Kosovar society increasingly developed along different lines than Albanian society – the creation of an independent state. Successive Serbian regimes have only encouraged the support for these goals, by alienating Albanians from equal political participation, failing to protect Albanian's civil rights, and resorting to brute force to solve any problem within Kosovo – in other words, not creating a legitimate political system in this region.

The return of the Serbian army in 1918 was met with resistance by groups of guerrilla fighters, as insurgency spread over large parts of Kosovo, Montenegro, and Macedonia. The most famous *kaçak* (guerrilla) leader was

⁴³ It is estimated that Serbia lost 25 per cent of its population during the First World War. Željko E. Šuster, *Historical Dictionary of the Federal Republic of Yugoslavia* (Lanham, MD: Scarecrow Press, 1999), p. 333.

⁴⁴ This country was cobbled together from Serbia, Montenegro, the territories conquered during the Balkan Wars, and areas of the Austro-Hungarian Empire with South Slavic populations (Croatia, Slovenia, Bosnia-Herzegovina, and Vojvodina). In October 1929, the name of the country was changed to the Kingdom of Yugoslavia, after King Aleksandar declared a royal dictatorship earlier that year. The term Yugoslavia will be used throughout the rest of this chapter.

Azem Bejta (killed in 1924), and Serbian military operations to crush him and other *kaçaks* resulted in heavy civilian casualties.⁴⁵ Eighty years after these events, some of the same families would again be involved in armed resistance against Serbian forces. In the interwar era, resistance was strong in areas such as the Drenica Valley, one of the Kosovo Liberation Army's (KLA) main bases of support in the 1990s. In addition to the military campaign, Serbian tactics involved "colonization", a policy which settled Serbian families from the north on land taken away from Albanians. About 45,000 Albanians fled Kosovo, under pressure, with about 60,000 Serb colonists moving into the province to take their places.⁴⁶ The Belgrade regime confiscated at least 47,044 hectares of arable land from Kosovar Albanians, turning some of that land over to the army.⁴⁷ Plans for even more drastic measures against the Albanians developed in Serbian political circles, which laid the groundwork for the wholesale expulsion of Albanians from Kosovo.⁴⁸ While this was never implemented, Serbian rule was characterized by the use of force to maintain control rather than any attempt to include the Albanian population in the political system. Albanian language schools and publications were prohibited, and initially the Serbs denied that a minority of Albanians even existed in Kosovo.⁴⁹ Serbian hegemony also alienated the other ethnic groups in interwar Yugoslavia, creating weaknesses which quickly became apparent when Axis armies invaded on 6 April 1941. Low morale and poor organization contributed to the Yugoslav

⁴⁵ . Malcolm, *Kosovo*, pp. 273-278; also Misha Glenny, *The Balkans: Nationalism, War and the Great Powers, 1804—1999* (New York: Viking Press, 1999), p. 367.

⁴⁶ . Christine von Kohl and Wolfgang Libal, *Kosovo: gordischer Knoten des Balkan* (Vienna and Zürich: Europaverlag, 1992), pp. 42—43, 44.

⁴⁷ . Nikola Gačesa, "Settlement of Kosovo and Metohija after World War I and the Agrarian Reform", in *Kosovo: Past and Present*, p. 102. See also Branko Petranović, *Istorija Jugoslavije 1918—1988*, Vol. 1: *Kraljevina Jugoslavija 1914—1941* (Belgrade: Nolit, 1988), p. 98.

⁴⁸ . Malcom, *Kosovo*, pp. 285—286. A campaign of terror and the destruction of Albanian property was suggested by Serbian historian Vaso Čubrilović in his 1937 recommendation to the Serbian government, "The Expulsion of the Arnauts [a Turkish word for Albanians]". See Judah, *Kosovo: War and Revenge*, pp. 23—24.

⁴⁹ Malcolm, *Kosovo*, p. 269.

army's quick collapse, and Yugoslavia was divided between Germany, Italy, Hungary, and Bulgaria, with satellite governments established in Belgrade and Zagreb.

The events in Yugoslavia during the Second World War had an incredible impact on all the ethnic groups in the region, and its consequences still affect politics today. This was also the case in Kosovo. Most of Kosovo was attached to Albania, which had been occupied by Italy since 1939, while the northern part (bordering Serbia proper and containing important mineral resources coveted by the Axis war machine) was directly administered by Germany. In the resultant "Greater Albania", as Viktor Meier notes, "...the most capable and most renowned Albanian politician..., Xhaver Deva, came from Kosovo..."⁵⁰ Although many Albanians did not support their new fascist overlords, they nonetheless welcomed the removal of the despised Serbian government. The Albanians also relished the opportunity which fascist occupation engendered to reverse two decades of Serbian colonization.⁵¹ The Italians promoted publications and education in the Albanian language, and even opened numerous schools in the areas under their control.⁵² Albanians also helped Axis units in expelling Serbs (especially those who had been recent arrivals under the colonization program), although attempts to create full-fledged Albanian quisling units were generally unsuccessful. However, because Albanians found that conditions had in many ways improved under the Italians, this gave Serbs justification for labeling political opponents as collaborators after the war was over and Kosovo once again returned to Yugoslavia.

Unlike in other parts of occupied Europe, the war in Yugoslavia was not just between the Axis occupiers and resistance groups, but erupted into a multi-

⁵⁰ . Viktor Meier, *Wie Jugoslawien verspielt wurde*, 2nd ed. (Munich: C. H. Beck'sche Buchdruckerei, 1996), p. 51.

⁵¹ . Branko Petranović, *Srbija u drugom svetskom ratu 1939—1945* (Belgrade: Vojno-izdavački i novinski centar, 1992), pp. 251—252.

⁵² Bernd J. Fischer, *Albania at War, 1939—1945* (West Lafayette, IN: Purdue University Press, 1999), p. 87.

sided conflict often split along ethnic lines. The one force which transcended ethnic divisions was the communist-led Partisan movement, under the leadership of Marshal Josip Broz Tito. The Partisans stressed that the liberation war they were waging would lead to the creation of a country which would solve the nationality problems plaguing the Kingdom of Yugoslavia, expressed in the slogan of “Brotherhood and Unity”. For most of the war, the communists had difficulty generating support in Kosovo, since the Albanians saw it as another attempt to impose Serbian hegemony, while Serbs generally supported the *četniks*, guerrilla fighters who wanted to restore the Serbian monarchy.⁵³ The persistence of Partisan commanders in Kosovo and victories on the battlefield eventually drew more Kosovar Albanians to the side of the communists, particularly after Tito gave considerable support to the communist movement in Albania under Enver Hoxha. Some Albanian resistance groups refused to join Tito’s National Liberation Movement, most importantly Balli Kombëtar, which was mercilessly hunted down after the victory of the Partisans.

The status of post-war Kosovo was not explicitly discussed at the second AVNOJ [Antifašističko veće narodnog oslobodjenja Jugoslavije – Anti-Fascist Council of the National Liberation of Yugoslavia] convention held in Jajce in November 1943, when the government of socialist Yugoslavia was effectively created, but the Albanian CP was by this point making its opinion known, viz., that Kosovo should be assigned to Albania in the post-war settlement.⁵⁴ The Yugoslav communists were doggedly opposed to any such notion, except in the event that the thereby enlarged Albania would join the Yugoslav federation as

⁵³ While the *četniks* initially resisted the Axis occupiers, they abstained from attacks on German and Italian troops following brutal reprisals against civilians. Realizing that the communist Partisans posed the greatest threat to the post-war political situation, the *četniks* began collaborating with the Axis forces in military actions against the Partisans, as well as committing atrocities against Albanian, Croatian, and Muslim civilians in retaliation for their own alleged collaboration. For a detailed study on the *četniks*, see Jozo Tomasevich, *The Chetniks: War and Revolution in Yugoslavia, 1941–1945* (Stanford: Stanford University Press, 1975).

⁵⁴ . Petranović, *Srbija u drugom svetskom ratu*, p. 556.

its “seventh republic”. A variation on this notion foresaw Albania’s inclusion in a Balkan Federation, together with Bulgaria and Yugoslavia, with Tito as the presumed president of the new state.⁵⁵ This idea eventually fell through, primarily because of Stalin’s opposition to it.⁵⁶ Tito also needed to appease the Serbs in Serbia in order to gain their support, since before 1944 there had been little Partisan activity in Serbia proper.⁵⁷ Kosovo was thus “reattached” to Serbia in 1944-1945, requiring Partisan units many months to pacify the region and resulting in 36,000 deaths.⁵⁸

The Albanians of Kosovo were divided into two broad groups, espousing alternative concepts of sovereignty. For the resistance, Kosovo was best viewed as an alienated part of a sovereign Albania, a territory to which Belgrade had a legitimate claim. For communist loyalists, on the other hand, “realism” was the byword, and appeals were made for the recognition of Kosovo’s “limited sovereignty” on a par with Serbia, Croatia, Slovenia, Bosnia-Herzegovina, Macedonia, and Montenegro. This meant Kosovo’s elevation to “republic” status within the new Yugoslav federation – a demand the fulfillment of which, inevitably, Serb communists would not allow.⁵⁹

Tito nevertheless sought to give Kosovo some degree of autonomy, and in the 1946 Constitution, Kosovo was declared to be an “Autonomous Region”. This was in contrast to the six republics constituting the Socialist Federal Republic of Yugoslavia (SFRY), which were considered to have some degree of sovereignty. While each republic was a homeland for one of Yugoslavia’s constituent “nations” (Serbs, Croats, Slovenes, Macedonians, and Montenegrins

⁵⁵ . For discussion, see Slobodan Nešović, *Bledski sporazumi: Tito—Dimitrov (1987)* (Zagreb: Globus and Školska knjiga, 1979).

⁵⁶ For accounts of Stalin’s opposition to the Balkan federation and other developments in Yugoslavia, see Milovan Djilas, *Conversations with Stalin*, trans. by Michael B. Petrovich (New York: Harcourt, Brace & World, 1962).

⁵⁷ Mertus, *Kosovo*, p. 287.

⁵⁸ *Ibid.*

⁵⁹ . Details in Miloš Mišević, *Ko je tražio republiku: Kosovo 1945—1985* (Belgrade: Narodna knjiga, 1987), pp. 5—62.

– Bosnian Muslims achieved this status in 1968), Kosovo’s Albanians were considered to be a “national minority” (later the terminology was changed to “nationality”), since there existed a country with Albanians outside of Yugoslavia. The republics also theoretically had the right to secede, something Kosovo and Serbia’s other autonomous province, Vojvodina, did not. Since many Kosovar Albanians were seen as Axis collaborators, Kosovo was placed under martial law immediately after the war ended. Repression increased in 1948 after Yugoslavia’s break with the Cominform (and most importantly with respect to Kosovo, Hoxha’s Albania), and was directed by the Minister of Internal Affairs and head of the secret police, Aleksandar Ranković. While all of Yugoslavia was under a highly authoritarian and centralized system for the first twenty years after the war, conditions in Kosovo were particularly harsh until Ranković’s fall from power in 1966. Demographic change was once again taking place, as Albanians fled to Turkey because of the repression, and Serbs left for other areas of Yugoslavia claiming harassment and pressure from Albanians.

Beginning in 1963 and continuing with amendments passed 1967—1971 and with the 1974 constitution, the Yugoslav communists decentralized the political system, giving the republics more sovereignty over their own affairs. While Serb communists grumbled about the new state of affairs, Kosovar Albanians were once more voicing their desire for republic status to be granted to Kosovo, but despite demonstrations and some violence, the federal authorities agreed only to increase the autonomy (and change the name of Kosovo from “Autonomous Region” to “Autonomous Province”). Concessions to the Albanians did include the opening of an Albanian-language university (in Priština in 1969), cultural recognition, and closer ties between Kosovo and Albania. The status of Kosovo and Vojvodina was codified in the 1974 Constitution, but significantly, these two Autonomous Provinces were not granted a formal right to secede, a right accorded to the republics. This period is

nonetheless seen as the zenith of good relations between the Serbs and Albanians, with Kosovo receiving the greatest amount of autonomy it would ever have in Yugoslavia.

Kosovo from the death of Tito to the Dayton Accords

The death of Tito on 4 May 1980 came at a time of deepening economic morass, and Tito's successors soon proved incapable of dealing effectively with the growing challenges. In Kosovo, illegal separatist organizations were appearing and were distributing propaganda materials in the province. The Albanians of Kosovo were rife with discontent, above all because they had been denied their sovereignty.⁶⁰

Under these conditions, student protests over bad conditions at the university (in March 1981) quickly erupted into demonstrations throughout Kosovo, to which the Serbian authorities responded with military force. During this period of martial law, hundreds of Albanians were apparently killed (the Serbian media reported only eleven deaths) and thousands of others were beaten and arrested. The demands of the protestors ranged from improving the economic and social conditions in Kosovo, to the granting of republic status for the province, sentiments which had also been expressed during protests in 1968.⁶¹ The Serbian authorities portrayed the demonstrations as counter-revolutionary and guided by irredentists wanting to unite Kosovo with Albania, accusations which, while having some element of truth, were greatly exaggerated in order to justify the harsh crackdown.⁶²

⁶⁰ . See Dušan Ristić, "Kosovo i Savez komunista Kosova između dva kongresa i dve konferencije", in *Obeležja* (Priština), Vol. 8, No. 2 (March—April 1978), p. 24; and Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia, 1962—1991*, 2nd ed. (Bloomington, Ind.: Indiana University Press, 1992), pp. 194—195.

⁶¹ Ristić, "Kosovo i Savez komunista", pp. 29—32; and *Frankfurter Allgemeine* (27 April 1981), p. 3.

⁶² Tim Judah notes that many of the Albanian opposition groups carried Marxist-Leninist names and openly praised Enver Hoxha. See Judah, *Kosovo: War and Revenge*, p. 40.

Would the problems in Kosovo have been solved if it had become a seventh republic within Yugoslavia? According to Fatmir Limaj⁶³ and Izet Sadiku,⁶⁴ a Kosovo republic within Yugoslavia was never the ultimate goal. In their view, Albanians “never belonged” in Yugoslavia, and self-determination had always been the desired outcome.⁶⁵ Granted, both of these men had been part of the KLA, and thus view independence as the only solution, but conferring republic status on Kosovo would only have made the province’s secession more legitimate in a legal sense, rather than solve the basic problem which was the lack of a legitimate system. Even moderate Kosovar politicians such as Ibrahim Rugova have sought independence for Kosovo, the difference being that he has advocated peaceful means rather than guerrilla warfare.

Despite the anti-Albanian repression by the Yugoslav military and police units, throughout the 1980s it was Kosovar Serbs who claimed they were being victimized. It was clear that after the events of 1981, Serb-Albanian relations had visibly soured. The Serbian media fueled the perception of an unrelenting campaign by Albanians to expel Serbs, publishing stories of Albanians raping Serbian women, harassing and threatening Serbs so as to chase them off of their land, and ignoring the ongoing violence when Serbs allegedly reported these crimes to the (mostly Albanian) authorities. The Yugoslav census figures do indicate a decrease in the population of Serbs in Kosovo, and there is no doubt that there were individual acts of violence and intimidation. By the 1970s, processes of *de facto* social segregation were occurring in Priština, and relations between the Serb and Albanian communities were increasingly characterized by fear. Serbs and Montenegrins complained, for example, that they were afraid to

⁶³ Limaj is a member of Hashim Thaqi’s political party, PDK (Kosovo Democratic Party), and is the PDK’s “political representative” on the Kosovo Transition Council (KTC). During the war, Limaj was a high-ranking member of the Kosovo Liberation Army (KLA).

⁶⁴ Sediku, also formerly in the KLA, is the vice president of the Youth Forum of the LDK (Democratic League of Kosovo), the party founded by Ibrahim Rugova.

⁶⁵ Interview with VP, 3 August 2000, Seattle, Washington.

receive care from ethnic Albanian health care providers.⁶⁶ Serbs and Montenegrins began to leave Kosovo for more hospitable parts. And while Albanian sources and scholars partial to the Albanian side claimed that economic duress was the principal reason why Serbs were leaving the province in droves, Serbian sources and scholars partial to the Serbian side claimed that unemployment and economic depression, while not without importance, were not the main reasons for the outmigration of Serbs and Montenegrins in the 1980s.⁶⁷ Between April 1981 and December 1987 alone, some 24,209 Serbs and Montenegrins abandoned their homes in Kosovo, generally taking up residence in Serbia proper.⁶⁸ This contributed to a change in the demographic structure in the province, as the percentage of Serbs dropped from 23.6 per cent in 1961 to 18.4 per cent in 1971, reaching a new low of 13.2 per cent in 1981.⁶⁹ Another factor affecting the demographic structure was the high birth rate of the Albanians (although rural Serbs in Kosovo had higher birth rates than Serbs in other parts of Yugoslavia), which resulted in ethnic Albanians making up nearly 90 per cent of the population by the 1990s. As political solutions were discarded by Belgrade in favor of continued repression, Albanians viewed the Yugoslav state as increasingly illegitimate.

The growing sentiment of persecution among many Serb intellectuals was expressed in an unfinished document (it was leaked to the press) called the *Memorandum*, written by members of the Serbian Academy of Sciences and Arts (SANU) in 1986. The *Memorandum* was a clear threat to the continued existence of Yugoslavia, since for the first time the Serbian intellectual community questioned the validity of Yugoslavia, long seen as the guarantor of security for the Serbian nation. The grievances cited in the *Memorandum*

⁶⁶ . Ruža Petrović and Marina Blagojević, *The Migration of Serbs and Montenegrins from Kosovo and Metohija: Results of the Survey Conducted in 1985—1986* (Belgrade: Serbian Academy of Sciences and Arts, 1992), p. 122.

⁶⁷ . *Ibid.*, p. 53.

⁶⁸ . *NIN* (Belgrade), no. 1941 (13 March 1988), p. 16.

⁶⁹ . Judah, *The Serbs*, p. 152.

included the alleged exploitation of Serbs by the other nations of Yugoslavia, the claim that Tito had deliberately weakened Serbia by creating two autonomous regions which could vote against Serbia at the federal level, and the deplorable condition of Serbs in the nation's heartland, Kosovo. The *Memorandum* described how pressure from Albanians and their high birth rate was tantamount to a "genocide" of the Serbian nation.⁷⁰ This document caused considerable controversy in the Serbian press as well as in the other republics, but nevertheless, after this point nationalism in Serbia began to be expressed more openly and became a viable political tool. The politician who benefited the most from the conclusions reached by the *Memorandum* was Slobodan Milošević, whose quest to reassert Serbia's power in Yugoslavia began in its most troubled province, Kosovo.⁷¹

Milošević exploited the Kosovo question to fashion his own rise to power from 1987-1989, followed by changes in the Constitution in order to strengthen the status of Serbia within Yugoslavia, as well as Serbs in Kosovo.⁷² Already in July 1987, even before he had carried out his coup within the Serbian party organization, Milošević told the Sixth Session of the Central Committee of the LC Serbia, "Where Kosovo is concerned, we have been hearing appeals for six years already to keep a cool head. That policy has, in the event, been shown to

⁷⁰ Incidentally, demographic change in Croatia and Bosnia-Herzegovina, where the percentage of Serbs in the population had declined since the end of the Second World War, was also seen by the authors of the *Memorandum* as "genocide". See Kosta Mihailović and Vasilije Krestić, *Memorandum of the Serbian Academy of Sciences and Arts: Answers to Criticisms* (Belgrade: SANU, 1995), pp. 10—11.

⁷¹ . For discussion, see Tim Judah, *The Serbs: History, Myth, and the Destruction of Yugoslavia* (New Haven, Conn.: Yale University Press, 1997), pp. 158—159. Although the authors assert that Milošević had no connection to the *Memorandum* and that his political platform merely reflected the sentiment of Serbs at the time, the grievances found in the *Memorandum* were incorporated into Milošević's rhetoric along with other Serbian national myths and historic manipulations. See Mihailović and Krestić, *Memorandum*, pp. 80—81.

⁷² For a detailed history of Milošević's rise to power, see Robert Thomas, *Serbia under Milošević: Politics in the 1990s* (London: Hurst, 1999).

be entirely erroneous.”⁷³ Once ensconced in power, Milošević moved resolutely to smother Kosovo’s constitutionally-anchored autonomy. In May 1988, Azem Vllasi was forced to relinquish the leadership post in Priština, but his successor, Kaqusha Jashari, continued to defend the province’s limited sovereignty, as guaranteed by the constitution of 1974, and to resist the constitutional amendments being advocated by Serbian communists.⁷⁴ But Jashari was herself forced to step down in November 1988, and in February 1989, Belgrade used a combination of illegal and extralegal means to suppress Kosovo’s autonomy. Subsequently, Milošević orchestrated the removal of thousands of Albanians from their jobs at the university, in the medical profession, in the military and police, and from government positions, which were quickly filled by Serbs.⁷⁵ According to Milošević, this was necessary in order to preserve the sovereignty of both Serbia and Yugoslavia.⁷⁶ Not only had communism failed as a legitimate form of government throughout Eastern Europe (including Yugoslavia) and the former Soviet Union, but the arbitrary violation of the Constitution by the Belgrade leadership made it clear to the Kosovar Albanians that it would be impossible to achieve a liberal, democratic society by working within the current system. On 2 July 1990, members of Kosovo’s provincial parliament (who were actually locked out of the parliament building) voted for Kosovo to become a republic (independent of Serbia but still within Yugoslavia), which was followed by a referendum on independence in 1991, as war broke out in Slovenia and Croatia upon their declarations of independence.⁷⁷ Although the Serbs boycotted the vote, 99 per cent of those who voted chose

⁷³ . Slobodan Milošević, *Godine raspleta*, 2nd ed. (Belgrade: Beogradski izdavačko-grafički zavod, 1989), p. 160.

⁷⁴ . Meier, *Wie Jugoslawien*, p. 136.

⁷⁵ . Details in Sabrina P. Ramet, *Whose Democracy? Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe* (Lanham, Md.: Rowman & Littlefield, 1997), pp. 148—151.

⁷⁶ . Mertus, *Kosovo*, pp. 176—177.

⁷⁷ . Judah, *Kosovo: War and Revenge*, pp. 64—65.

independence for Kosovo, and on 19 October 1991 the now-illegal parliament declared an independent “Republic of Kosova”.⁷⁸

Thus, in the 1990s, a shadow state was built up by the Kosovar Albanians which co-existed with the Yugoslav one. In 1992 elections were held, unhindered by the Serbian authorities, which resulted in Ibrahim Rugova’s ascendancy to the presidency of this underground government. As war tore apart other areas of Yugoslavia trying to assert their sovereignty, Rugova and his followers advocated passive resistance and peaceful methods to achieve their goals, since the Serbian military was too strong in Kosovo. However, Rugova warned, in what would be prophetic statement, what would happen if the Albanians continued to be denied their human rights. He stated that,

If Serbia goes on suppressing our national identity, then there will be an uprising. I can only warn the Serbs: they, too, are a small people. In the past, whenever a small people have tried to play the role of a power in the Balkans, this has always ended in tragedy for that people.⁷⁹

During this period, all the structures of a state were built, mostly with funds from Kosovars working abroad, including a parliament, an educational system, and separate health care services, which lasted until 1 February 2000 when it was dissolved by Rugova and its funds transferred over to the UN administration.⁸⁰ While sovereignty had, for the majority of the population, been transferred to this shadow state, the Serbs’ monopoly of force meant that effective sovereignty continued to reside in Belgrade. This does not mean that Belgrade’s authority was seen as legitimate by the Albanians actually living in the province. Indeed, while the world’s focus was on the ethnic cleansing going on in Croatia and Bosnia, human rights groups monitoring Kosovo continued to

⁷⁸ . *Ibid.*

⁷⁹ Interview with Ibrahim Rugova in *Der Spiegel*, No. 26 (1989), reprinted in Harillaq Kekezi and Rexhep Hida (eds.), *What the Kosovars Say and Demand* (Tirana: 8 Nëntori Publishing House, 1990), p. 27.

publish reports about the persecution of Albanians in Kosovo and how they were systematically being denied their human and civil rights.⁸¹ In April 1993, for example, Serbian police summoned members of the (now illegal) Kosovo parliament for “fact-finding talks”, in which the parliamentarians were allegedly subjected to harassment.⁸²

In spite of Rugova’s consistent calls for passive resistance and negotiation, a separatist organization calling itself The National Movement for the Liberation of Kosovo distributed pamphlets in spring 1993, calling for an armed insurrection.⁸³ Meanwhile, even as foreign powers suggested at most the restoration of the province’s pre-1989 autonomous status, Adem Demaqi, a long-suffering champion of Kosovo’s secession from Yugoslavia who has spent almost 28 years of his life in Serbian prisons, described autonomy as no more than a “temporary solution”, with self-determination as the only viable long-term solution.⁸⁴

Still, in spite of these rumblings, most Albanians of Kosovo held to Rugova’s pacifist approach and waited for the West to pressure Belgrade to agree to a negotiated settlement. When, in October 1995, talks were set for Dayton, Ohio, Rugova pressed President Clinton to be included in the talks. But Rugova was not included, and the Dayton peace accords ignored Kosovo – to the bitter disappointment of the province’s Albanians.

⁸⁰ *Star Tribune* (Minneapolis), 2 February 2000, online version at www.startribune.com.

⁸¹ . See, for example, *Open Wounds: Human Rights Abuses in Kosovo* (New York: Human Rights Watch/Helsinki, March 1993); and “Human Rights Abuses of Non-Serbs in Kosovo, Sandžak, and Vojvodina”, *Human Rights Watch Helsinki*, Vol. 6, No. 6 (May 1994).

⁸² . Radio Croatia Network (Zagreb), 12 April 1993, trans. in Foreign Broadcast Information Service (FBIS), *Daily Report* (Eastern Europe), 13 April 1993, p. 44.

⁸³ . According to Tanjug Domestic Service (2 April 1993), trans. in FBIS, *Daily Report* (Eastern Europe), 5 April 1993, p. 59.

⁸⁴ . Interview with Adem Demaqi, in *Trud* (Sofia), 26 July 1993, p. 10, trans. in FBIS, *Daily Report* (Eastern Europe), 30 July 1993, p. 72.

Kosovo since Dayton

After the crisis in Kosovo was ignored by the West during the Dayton Peace Accords in 1995 and the situation did not seem to be improving, some Kosovars began looking for an alternative to Rugova's pacifism. The origins of the Kosovo Liberation Army are still somewhat shrouded in mystery,⁸⁵ but rumors of its existence began to circulate in the course of 1996. By that point, the Belgrade regime had settled some 19,000 Serb refugees (mostly from Croatia) in Kosovo,⁸⁶ in a move which pleased neither the Albanians of Kosovo nor the refugees themselves. Then, in February 1996, the situation in Kosovo began to deteriorate, with some 580 cases of human rights abuses committed against local Albanians that month (up from 185 the previous month).⁸⁷ The following month, there were reports of Serbian police raiding Albanian homes, plundering Albanian firms, demolishing Albanian-owned shops, and otherwise mistreating local Albanians.⁸⁸

Even as Serb police abuses of the rights of Albanians continued,⁸⁹ Serbian politicians continued to deny that there were any human rights abuses and to rule out any "deals" concerning autonomy. Serbian Prime Minister Mirko Marjanović put it this way in July 1996:

Kosovo-Metohija is an integral and inalienable part of the Republic of Serbia and thereby of the Federal Republic of Yugoslavia. There can be no deals regarding Kosovo-Metohija...[I]n Kosovo-Metohija we are implementing the policy of preserving peace and are observing

⁸⁵ For a detailed account of the origins of the KLA, see Judah, *Kosovo: War and Revenge*, pp. 99—134.

⁸⁶ . ATA (Tirana), 10 June 1996, in FBIS, *Daily Report* (Eastern Europe), 13 June 1996, p. 60.

⁸⁷ . *Kosova Daily Report* (Pristina), 11 March 1996, in FBIS, *Daily Report* (Eastern Europe), 14 March 1996, p. 60.

⁸⁸ . See *Kosova Daily Report* (18 and 19 March 1996), summarized in FBIS, *Daily Report* (Eastern Europe), 21 March 1996, pp. 58—59; *Kosova Daily Report* (21 March 1996), in FBIS, *Daily Report* (Eastern Europe), 25 March 1996, p. 56; and *Kosova Daily Report* (21 and 22 March 1996), summarized in FBIS, *Daily Report* (Eastern Europe), 25 March 1996, pp. 56—57.

⁸⁹ . See *Kosova Daily Report* (13 August 1996), in FBIS, *Daily Report* (Eastern Europe), 15 August 1996, p. 54.

constitutionally guaranteed and legally defined equal rights for all citizens regardless of their national and religious affiliation and in line with the highest European and world standards.⁹⁰

Yet, after the shooting, on 21 April, of 20-year-old Armend Daçi (an Albanian) by Zlatko Jovanović (a Serb), local Albanians were quick to translate the incident into ethnic terms. Reprisals against Serbian police officers and civilians took place across the province the following day. By 25 April, the independent Belgrade daily newspaper *Naša borba* was fretting that “a single spark would be enough to bring the already inflammable situation to boiling point.”⁹¹ Four days later, printing a commentary by Bahri Cani, *Naša borba* repeated the warning, noting that the escalation of violence “...could lead to much wider and bloodier clashes – even to all-out war, which would be impossible to keep within the borders of Kosovo.”⁹² But, in the absence of convincing concessions from Belgrade, such warnings could have no effect. Kosovo was already spinning out of control,⁹³ and an insurgent guerrilla force, the Kosova Liberation Army (KLA) was already readying itself for action.

Among the first KLA actions were the simultaneous attacks on several police stations across the province at about 9:30 p.m. on 2 August.⁹⁴ Two days later, Željko Ražnjatović (“Arkan”), the brutal leader of the Serbian Tigers paramilitary units, arrived in the province, to parade with his forces on the streets of Priština and Podujevo.⁹⁵ Pacifism had given way to confrontation.

Subsequently, after the collapse of Albania’s government in 1997 and the looting of weapons depots, the military option became increasingly viable in

⁹⁰ . Quoted in Tanjug Domestic Service (30 July 1996), trans. in FBIS, *Daily Report* (Eastern Europe), 31 July 1996, p. 45.

⁹¹ . *Naša borba* (Belgrade), 25 April 1996, p. 1, trans. in FBIS, *Daily Report* (Eastern Europe), 29 April 1996, p. 61.

⁹² . *Naša borba* (29 April 1996), p. 8, trans. in FBIS, *Daily Report* (Eastern Europe), 30 April 1996, p. 71.

⁹³ . See details in Ramet, *Whose Democracy*, pp. 157—158.

⁹⁴ . Tanjug Domestic Service (3 August 1996), trans. in FBIS, *Daily Report* (Eastern Europe), 5 August 1996, p. 54.

achieving an independent Kosovo. Inevitably, the Serbian military's tactics resulted in civilian deaths as it tried to hunt down the elusive KLA, and the burning villages of Kosovo were reminiscent of the tactics used against the *kaçaks* earlier in the century.

On 28 February 1998, according to the testimony of Fred Abrahams of Human Rights Watch,

Serbian police, paramilitary, and possibly the army began an all-out attack on the triangle of villages in the Drenica region of central Kosovo, the alleged stronghold of...the Kosovo Liberation Army. All evidence indicates that the security forces used violence that was both brutal and indiscriminant. An estimated 80 people were killed, many of them civilians.⁹⁶

Recoiling from this tragedy, the Albanians of Drenica took to arms, and an emboldened KLA began a major, if rather conventional, military offensive, controlling about one-third of the province by July of that year. But at the end of the month, Serbian forces began a stiff counter-offensive, easily rolling back the KLA and adopting "scorched earth" policies in rebel areas. By late summer there were approximately 200,000 Kosovar Albanian refugees⁹⁷ hiding in the hills or fleeing into neighboring countries, which prompted the international community to issue warnings against Milošević's continued use of brute military force. While the insertion of OSCE observers temporarily halted the violence, several massacres of ethnic Albanian civilians in early 1999 spurred the West into action, leading to the 78--day NATO bombing campaign after the Serbs refused to sign the Rambouillet Accords, which would have called for an international military presence in Kosovo. NATO's air campaign was answered

⁹⁵ . ATA (5 August 1996), in FBIS, *Daily Report* (Eastern Europe), 6 August 1996, p. 50.

⁹⁶ . "Repression and Violence in Kosovo" (18 March 1998), in *Two Hearings before the Commission on Security and Cooperation in Europe*, 105th Congress, 2nd session (Washington D.C.: U.S. Government Printing Office, 1998), p. 12.

⁹⁷ Figure given by UN High Commissioner for Refugees, Sadako Ogata, in a speech on 5 October 1998, online version at www.unhcr.ch/refworld/unhcr/hcspeech/05oc1998.htm; this figure is also cited by Michael MccGwire, in "Why did we bomb Belgrade?", in *International Affairs* (London), Vol. 76, No. 1 (January 2000), p. 4.

by a full-scale assault against Kosovo's Albanian population by the Serbian army and paramilitary units, creating a humanitarian disaster as an estimated 862,979 refugees fled Kosovo by 9 June.⁹⁸ Some 500 Serbian civilians were estimated, by Human Rights Watch, to have died during NATO's aerial bombardment,⁹⁹ while Serbian troops killed thousands of Albanian civilians during the same period, looting and torching Albanian-owned houses in their rampage.¹⁰⁰ As it turns out, Milošević's eventual capitulation resulted in the very military occupation he had tried to resist, although he had undoubtedly strengthened his own grip on power domestically by standing up to the West.

Kosovo and post-Milošević Serbia

The removal of Slobodan Milošević from power, after his attempt to rig elections sparked popular street demonstrations in October 2000, was welcomed by the West and by many Serbs, who saw those events as the victory of democratic forces over an increasingly authoritarian regime. In Kosovo, however, the fall of Milošević was interpreted in a different light. For the Kosovar Albanians, the presence of Milošević was one of the strongest arguments for not returning Kosovo to the control of Belgrade, since Milošević and several of his close associates had been indicted as war criminals by the International Criminal Tribunal for the former Yugoslavia during the NATO campaign. UN Security Council Resolution 1244, the mandate under which the current UN administration is operating, places Kosovo under the sovereignty of the Federal Republic of Yugoslavia (FRY), although there are provisions for

⁹⁸ . Figure as given by Carl Cavanagh Hodge, in "Casual War: NATO's Intervention in Kosovo", in *Ethics & International Affairs*, Vol. 14 (2000), p. 47.

⁹⁹ . *Star Tribune* (7 February 2000) at www.startribune.com. The Yugoslav Army high command claimed that, in addition, some 545 of its soldiers were killed in the course of NATO air strikes. See *Beta news agency* (14 June 2000), in *BBC Summary of World Broadcasts* (16 June 2000), on LNAU.

¹⁰⁰ Between June and December 1999, ICTY forensics teams exhumed the bodies of 2,108 Albanians killed by Serbs and buried in 195 graves. It was thought that more graves remained to be found. See *Agence France Presse* (14 June 2000), at LNAU.

establishing “substantial autonomy and self-government” pending a final settlement on the status of Kosovo.¹⁰¹ The wording of this document leaves the possibility open for the return of Kosovo to Belgrade’s control (however unlikely that may seem), while at the same time not explicitly ruling out an independent state which is supported by the overwhelming majority of ethnic Albanians and all of the Albanian political parties.

The ouster of Milošević and the establishment of a democratic and seemingly reformist government in Serbia could thus be seen as a negative development in the eyes of the ethnic Albanians in Kosovo, who could justify their drive for independence by emphasizing the illegitimacy of FRY’s political system and the crimes of Milošević and his coterie. Conversely, the new government of Yugoslav President Vojislav Koštunica and Serbian Premier Zoran Djindjić could argue that a Serbia without Milošević was democratic and capable of reintegrating Kosovo back into the federation. In fact, revising agreements over Kosovo was one of Koštunica’s first goals in the early months of his presidency, in particular regarding the buffer zone between Kosovo and southern Serbia which was off limits to Yugoslav troops and police.¹⁰² In December 2000, Koštunica’s foreign policy advisor, Predrag Simić, noted in an article in the Belgrade weekly *NIN* that the new government in FRY and the new international climate (referring to the US presidential elections) would make it more likely for Kosovo to return to the Yugoslav fold.¹⁰³ Serbian Deputy Premier, Nebojša Čović, was appointed as the head of the Coordinating Center for Kosovo and Metohija. In this capacity, he has attempted to reassert Serbia’s influence in the affairs of Kosovo, stating in Mitrovica on 20 February 2001 that Belgrade’s “new democratic authorities have...the formula to achieve [a solution to the Kosovo crisis] with the help of the international commu-

¹⁰¹ The full text of UNSC 1244 is available online at www.un.org/Docs/scres/1999/99sc1244.htm.

¹⁰² Radio Free Europe/Radio Liberty, *Newsline*, Vol. 4, No. 244 (19 December 2000), online version at www.rferl.org.

nity.”¹⁰⁴ By 2002, Čović’s attempts to increase Serbia’s involvement in Kosovo, in particular the close contacts with the Kosovar Serb coalition *Povratak*, (Return), prompted Michael Steiner, head of the UN administration since February 2002, to tell him that the “Belgrade authorities have no right to interfere in Kosova’s affairs.”¹⁰⁵ Steiner has continued to assert UNMIK’s sovereignty in Kosovo by condemning the separate government organizations funded by Serbia which are functioning in northern Kosovo, an area predominantly inhabited by Serbs.¹⁰⁶ If the reports of parallel government structures are true, then it is further evidence that attempts to destabilize Kosovo or partition the territory continue, a tactic the Milošević government pursued in the aftermath of NATO occupation. Even though the regime change in FRY is a crucial first step for the normalization of the region, the nationalist ideology of the Milošević era remains embedded in the Serbian political system and influences any attempts to resolve ongoing problems in Kosovo.

The Kosovar Albanian response to Milošević’s fall were uniform despite the typical political divisions and lack of consensus. Ibrahim Rugova, considered a moderate, put it bluntly that Belgrade could not be trusted and that “the government could change there anytime.”¹⁰⁷ Rugova has continued to insist in numerous interviews and public statements that independence is the only viable future political solution for Kosovo, and that it is only a matter of time before Serbia and the rest of the international community realize that fact. Hashim Thaçi, the former KLA leader, agreed that the new government in Serbia represented a “new era”, but “for Kosova it doesn’t matter much. We

¹⁰³ *NIN*, No. 2608 (21 December 2000), online version at www.nin.co.yu.

¹⁰⁴ Quoted in Radio Free Europe/Radio Liberty, *Newsline*, Vol. 5, No. 36 (21 February 2001), online version at www.rferl.org.

¹⁰⁵ Radio Free Europe/Radio Liberty, *Newsline*, Vol. 6, No. 44 (7 March 2002), online version at www.rferl.org.

¹⁰⁶ *Washington Post* (22 June 2002), p. A13.

¹⁰⁷ Radio Free Europe/Radio Liberty, *Newsline*, Vol. 4, No. 215 (6 November 2000), online version at www.rferl.org.

want to be independent from Belgrade and from Koštunica.”¹⁰⁸ Another former KLA member and the head of the Kosova Protection Force, Agim Çeku, stated that “no Serbian leader and no Serbian government, no matter how democratic, can block Kosova’s path to independence.”¹⁰⁹ Elder ethnic Albanian statesman Adem Demaçi, in a visit to Belgrade in October 2000, congratulated Serbia’s new democratic leaders, but emphasized that “Kosovo is lost for Serbia” and added that “It’s not enough to remove one man. This man left behind a military-police complex and a destructive nationalist mentality.”¹¹⁰ To the new Serbian leadership and to many in the West, the departure of Milošević from the political scene and eventually to The Hague represented a radical shift in the Balkans, one which opened up the possibility of returning Kosovo to Yugoslav control. However, it has been seen that Kosovar Albanians across the political spectrum remain committed to creating an independent state, regardless of how democratic or liberal the remains of the Yugoslav Federation become.

Two important elections have taken place since the entry of NATO forces in 1999, important first steps in Kosovo’s path towards self-governance. Convincing Kosovo’s remaining Serbs to participate has been one of the greatest challenges during both of these elections, since one of the conditions stipulated by the UN mandate for self-governance is the development of a multiethnic society and ensuring the protection of minority rights. On 28 October 2000, municipal elections took place throughout Kosovo, although Kosovar Serbs refused to participate in the voting. The first ever democratic elections in Kosovo resulted in a victory for Rugova’s Democratic League of Kosovo (LDK), which won 21 out of 27 municipalities.¹¹¹ Even though the new councils only had responsibility for education, transport, health care, and other

¹⁰⁸ Quoted in Radio Free Europe/Radio Liberty, *Newsline*, Vol. 4, No. 195 (9 October 2000), online version at www.rferl.org.

¹⁰⁹ Radio Free Europe/Radio Liberty, *Newsline*, Vol. 4, No. 198 (12 October 2000), online version at www.rferl.org.

¹¹⁰ Quoted in the *Los Angeles Times* (1 November 2000), online version at www.latimes.com.

¹¹¹ *New York Times* (31 October 2000), p. A15.

local services, Rugova's first comments following the election results were to "call for immediate independence from Yugoslavia."¹¹² In Belgrade, Koštunica issued a statement that "Yugoslavia cannot recognize the results of local elections,"¹¹³ indicating that both Serbs and Albanians viewed this seemingly minor election as the first phase in redefining the sovereignty of Kosovo.

A significantly more important election took place on 17 November 2001, which elected a parliament with legislative powers and once again raised the issue of independence. In the month prior to the elections, Rugova made several statements suggesting that the elections would be an opportunity to work towards independence from Yugoslavia.¹¹⁴ This prompted Nebojša Čović to seek assurances from the head of UNMIK at the time, Hans Haekkerup, that the new Kosovo parliament would not be empowered to declare independence; Čović felt that he needed this reassurance if he was to convince Kosovar Serbs to participate in the elections. Even though Haekkerup denied signing any sort of agreement excluding future independence for Kosovo – following Albanian furor at Čović's announcement that "Yugoslavia has returned to Kosovo" – Yugoslav leaders encouraged the province's Serbs to take an active role in the political future of Kosovo and not boycott the elections.¹¹⁵ Despite threats from Serbian extremists, Serbs in Kosovo did turn out to vote on 17 November, winning 21 out of the assembly's 120 seats.¹¹⁶ An estimated 65 per cent of the registered voters in Kosovo participated in electing the Kosovo Assembly, with Rugova's LDK taking 46 per cent of the vote, followed by 25.54 per cent for Hashim Thaci's Democratic Party of Kosovo and 10.96 per cent for the Serbian

¹¹² *Ibid.*

¹¹³ *New York Times* (30 October 2000), p. A6.

¹¹⁴ Radio Free Europe/Radio Liberty, *Newslines*, Vol. 5, No. 193 (11 October 2001), online version at www.rferl.org.

¹¹⁵ See Radio Free Europe/Radio Liberty *Newslines* reports from 5–7 November 2001, online versions at www.rferl.org.

¹¹⁶ *New York Times* (20 November 2001), p. A8. Because of the threats, many Serbs went to vote just before the polls closed after dark. Approximately 46 per cent of the registered voters participated in the elections.

Povratak coalition.¹¹⁷ In spite of Rugova's clear plurality, the LDK was unable initially to put together enough votes to elect Rugova as president; the stumbling block was Rugova's reluctance to share power in a coalition government. It was not until 4 March 2002 that Kosovo's new parliament was able to reach a consensus after several months of deadlock. Ibrahim Rugova finally accepted the necessity of a coalition and was thereupon elected president.

Even though the creation of a parliament which includes the Serbian minority was a major step in the transformation of Kosovo into a sovereign state, the new head of UNMIK, Michael Steiner, made it clear that sovereignty was still held by the international community and the UN administration. On 9 May, the Kosovo Assembly held a debate over security concerns in Mitrovica and a border agreement signed between FRY and Macedonia in February 2001, which many Albanians do not recognize as being legitimate. This prompted Steiner to issue a warning to the Assembly not to overstep its competency, which does not include foreign relations and border issues as stipulated in Kosovo's Constitutional Framework. The Assembly ignored this warning and issued a resolution on 23 May disputing the FRY-Macedonia border agreement, angering Serbian deputies who walked out of the session.¹¹⁸ Steiner immediately vetoed the resolution, receiving support from both the UN Security Council and the European Union, on the grounds that the Assembly had exceeded its authority.¹¹⁹ Thus, the first attempt for the Kosovo Assembly to exercise real sovereignty was nullified by the international community, revealing that Kosovo, for the near future, will continue to exist as only a semi-sovereign state.

The current situation in Kosovo is extraordinarily complex, with three competing claimants to authority in Kosovo: the Serbian government, the

¹¹⁷ Radio Free Europe/Radio Liberty, *Newsline*, Vol. 5, No. 220 (20 November 2001), online version at www.rferl.org.

¹¹⁸ Radio Free Europe/Radio Liberty, *Newsline*, Vol. 6, No. 96 (23 May 2002), online version at www.rferl.org.

politically fractured Kosovar Albanians, and the international community under the auspices of the United Nations, though the international community makes its claims to authority only on a temporary and provisional basis and makes no claims to sovereignty.

First off, Belgrade continues to maintain that Kosovo is an integral part of Serbia, and that the results of the NATO campaign have only temporarily removed Kosovo from its direct control.¹²⁰ This claim to sovereignty is based on the historical precedence of a medieval Serbian kingdom and the inclusion of Kosovo into the modern Serbian state, even though that result has always been accomplished through violence and military force. The legal claims to this province are actually quite sketchy, as pointed out by Noel Malcolm. He argues that Kosovo was never legally incorporated into Serbia because the peace treaties after the Balkan Wars were never ratified by Serbia. However, after World War One, Kosovo's incorporation into the Kingdom of the Serbs, Croats, and Slovenes was officially confirmed; after World War Two, Kosovo was reincorporated into Yugoslavia, after a transient attachment to Italian-controlled Albania during the war.¹²¹ After socialist Yugoslavia collapsed in the 1990s, the international community refused to recognize the FRY's claim to be the legal successor to the Socialist Federated Republic of Yugoslavia. Since the international recognition of a state's territorial integrity, as defined by international law, applies by definition only to internationally recognized states, rump Yugoslavia's non-recognition among the international community left its

¹¹⁹ UNMIK News Archive (24 May 2002), at www.unmikonline.org/archives/news.

¹²⁰ See, for example, "Vojaska Jugoslavije će se vratiti na Kosmet", in *Politika* (Belgrade), 20 November 1999, at www.politika.co.yu/politika/arhiva/6sub/01_10.htm; "Kosmet je neotidjivi deo Srbije i Jugoslavije", in *Politika* (31 January 2000), at www.politika.co.yu/politika/arhiva/20000617/01_11.htm; and "Manilov: Vojsci i policiji SRJ omogućiti povratak na Kosmet", in *Politika* (29 June 2000), at www.politika.co.yu/politika/01_02.htm.

¹²¹ Malcolm, *Kosovo*, pp. 264—266.

claims on Kosovo in legal limbo.¹²² After the fall of Milošević, however, the FRY was rapidly admitted to certain international bodies and was allowed to (re)open its embassy in Washington D.C. With the transformation of the FRY into ‘Serbia and Montenegro’ in March 2002,¹²³ however, even the limited recognition accorded to Belgrade’s sovereignty under U.N. resolution 1244 seemed to melt away.

The Kosovar Albanian claim to sovereignty is based on the “situation on the ground” and the “will of the people”. Historically, Kosovo had never existed as a sovereign entity; it had been divided among different administrative units under the Ottomans, was forcibly annexed by Serbia after three separate wars, and ironically had experienced some of the most cultural autonomy for Albanians under the occupation of foreign armies (the Austrians during the First World War, and the Italians during the Second World War). While the Kosovar Albanians never had their own state, they certainly have a long historical tradition of trying to achieve independence. It is therefore no surprise that it was a guerrilla insurgency (of course aided by the world’s most powerful military alliance), which gave rise to the present ambiguous situation. In the opinion of most Kosovar Albanians, there is no question that they now live in the independent Republic of Kosova, regardless of what the Serbs or the international community might say. Fatmir Limaj, a member of the Kosovo Transition Council, stated that peace would come to Kosovo “only when the Serbs realize that the decisions are no longer being made in Belgrade, but in Priština”¹²⁴; in other words, Kosovo is already *de facto* independent and

¹²² This conclusion is argued in a report prepared in 1998 by the International Crisis Group titled “Intermediate Sovereignty as a Basis for Resolving the Kosovo Crisis”, online version at www.crisisweb.org. The report was compiled by a team of international lawyers who, as the title implies, advocated a form of “intermediate” sovereignty for Kosovo before the NATO campaign led to military occupation.

¹²³ . For details and discussion, see Sabrina P. Ramet and Philip W. Lyon, “Discord, Denial, Dysfunction: The Serbian-Montenegrin-Kosovar Triangle: Discord, Denial, Dysfunctionality”, in *Problems of Post-Communism*, (Vol. 49, No. 5, September—October 2002).

¹²⁴ Fatmir Limaj, interview with V.P., Seattle, Washington, 3 August 2000.

sovereign. Furthermore, this would extend over all of Kosovo, including the northern part bordering Serbia, which would be joined to Serbia if the province is partitioned, as some analysts have suggested. This is unlikely to be accepted by the Kosovar Albanians, since economic sovereignty is likewise a goal, and the important mining complex of Trepça is currently divided between Serbian and Albanian controlled territories, rendering the mines inoperable.¹²⁵ When asked if some sort of partition would be feasible, Limaj responded that the Albanians would take Trepça by force if necessary, since it is one of the most important assets of the region.¹²⁶

Finally, the international community, headed by UNMIK (United Nations Interim Administration Mission in Kosovo), is nominally the sovereign power in the province. Until 2002, the Kosovo Transition Council, with representatives from all of the Kosovar Albanian political parties and some moderate Serb organizations, functioned as the executive power. The November 2001 parliamentary elections were the first step in creating a self-governing body for Kosovo, and the 120-member Kosovo Assembly inaugurated on 10 December 2001 represented a shift of power from the UN to elected Kosovar politicians. Nevertheless, the UN civilian administration and the NATO security forces (KFOR) continue to have the final say in Kosovo's affairs, and will likely remain the effective sovereign bodies in Kosovo for the foreseeable future. The European Union (reconstruction) and the Organization for Security and Cooperation in Europe (institution building) add to the number of organizations from the international community operating under different mandates in

¹²⁵ The status of Trepça is currently unsolved, since according to the UN mandate in Kosovo the international body ruling the province can take over all state owned enterprises. The authorities in Belgrade claim that the mines are owned by private businesses, yet the connection between the owners and the state are not clear. Likewise, the Albanians claim the mine is theirs, but are unable to operate it since only the extraction facilities are under their control, while the processing complex is controlled by the Serbs. For further discussion of this issue, see the International Crisis Group report "Trepça: Making Sense of the Labyrinth" (11/26/99), online version at www.crisisweb.org.

¹²⁶ Fatmir Limaj, interview with V.P., Seattle, Washington, 3 August 2000.

Kosovo. Unfortunately, a lack of resources and bureaucratic inefficiency resulting from the complex international administration have plagued Kosovo in the three years of international rule, a situation in which many basic state functions were not being performed. This has led to continuing violence, the growth of criminal organizations and activity, and a desire by the Kosovars to select their own government. The international community, however, has never openly supported an independent Kosovo, and the assumption is that Kosovo would revert to Serbian sovereignty, albeit with a great deal of autonomy. The development of a liberal democratic society is of utmost importance, but this will require time before the animosity generated by the latest war is overcome.

Conclusion

Serbian claims have, in fact, been advanced both on Hobb'sian premises (appealing to state sovereignty) and on nationalist premises (appealing to notions of popular sovereignty, albeit in corrupted form). The Serbian argument for state sovereignty runs along the following lines: The FRY is a sovereign state and, as such, is entitled to maintain peace and stability within its own borders, free of foreign or international interference; Albanian separatists – the official Serb argument continues – have been relentlessly pursuing a nationalist-chauvinist program, attacking innocent Serbs, even while demonizing Serbia in the eyes of the world.¹²⁷ The appeal to state sovereignty is an appeal to the alleged primacy of positive law over either Natural Law or international law – an appeal which recalls the pure conventionalism of Thrasymachus.¹²⁸ But there is a second Serbian argument, albeit unofficial, which appeals to notions of blood and soil, nation and national memory, justifying Serbian sovereignty not on the basis of the preferences of recent or current inhabitants, but on the basis of the ethnicity of long-dead residents. As Matija Bečković, president of the

¹²⁷ See, for example, the comments by Vojislav Živković, as reported in Tanjug (30 December 1995), in FBIS, *Daily Report* (Eastern Europe), 2 January 1996, pp. 74–75.

Serbian Association of Writers, once put it, “There is so much Serbian blood [which has been shed in Kosovo] and so many sacred relics that Kosovo will remain Serbian land, even if not a single Serb remains there.”¹²⁹ In another context, replying to rather different points which had been made by the eighteenth-century English political commentator, Edmund Burke, Thomas Paine noted,

There never did, there never will, and there never can exist a parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to the ‘end of time’, or of commanding for ever how the world shall be governed, or who shall govern it; and therefore, all such clauses, acts or declarations, by which the makers of them attempt to do what they have neither the right to do, nor the power to execute, are in themselves null and void.¹³⁰

The Albanian counter-claims have been based on explicit appeals to notions of national self-determination, buttressed by documentation of systematic human rights abuses at the hands of the Milošević regime. Hivzi Islami states the Albanian case, emphasizing that the Albanian people have been artificially divided – even within socialist Yugoslavia – and that they enjoy a right to unite and to determine their own future.¹³¹ Isa Zymberi, director of the Kosovo Information Center, put it this way in March 1998, in testimony before a U.S. congressional commission:

It is an illusion to expect that the Albanians of Kosovo will ever experience Serbia as their own state or accept to be citizens of Serbia,

¹²⁸ . See Plato, *The Republic*, Book 1.

¹²⁹ *Kosovo 1389–1989*, Special ed. of the *Serbian Literary Quarterly*, nos. 1–3 (1989), p. 45.

¹³⁰ Thomas Paine, *Rights of Man* [1791–92] (Harmondsworth, Middlesex: Penguin Books, 1969), p. 41.

¹³¹ Hivzi Islami, “Demografska stvarnost Kosova”, in Dušan Janjić and Skelzen Maliqi (eds.), *Sukob ili dijalog* (Subotica: Otvoreni univerzitet i EGCRK, 1994), pp. 29–30, as summarized in Marina Blagojević, “The Migration of Serbs from Kosovo during the 1970s and 1980s: Trauma and/or Catharsis”, in Nebojša Popov (ed.), *The Road to War in Serbia: Trauma and Catharsis*, English version by Drinka Gojković (Budapest: Central European University Press, 2000), p. 237.

as it is an illusion to think that any Serbian regime will ever be prepared to treat the Albanians as equal citizens of the state. The Drenica massacre illustrates this best. If Serbia and the Serbs in general had been prepared to live in equality with other peoples, the Former Yugoslavia not only would not have disintegrated but would have probably been among the first to join the EU and NATO.¹³²

Serbian claims and Albanian counterclaims to Kosovo have stirred controversy precisely because there continue to be disagreements about the very principles to which they appeal. When the Albanians speak of their “sovereignty” in Kosovo, they refer implicitly to a notion of popular sovereignty,¹³³ under which “sovereignty” is invested in the people residing in the country. When the Serbs speak of their “sovereignty” in Kosovo, by contrast, they think of sovereignty as per Thrasymachus or Hobbes, as a feature of the state, with its territorial extent fixed by history or, perhaps, by force, rather than by the will of the people residing in one or another place. Needless to say, there is no point of contact between these two concepts of sovereignty. Having identified these two rival concepts of sovereignty, however, we can appreciate that, when Michael McCwire, the distinguished specialist in security affairs, worries that the NATO intervention showed disrespect for “Serbia’s *legitimate* interests as the *sovereign* power,”¹³⁴ he is implicitly accepting the Hobb’sian – and in this case, also Serbian – notion of sovereignty.

On the other hand, in an article titled “Sovereignty is No Longer Sacrosanct”, Jarat Chopra and Thomas Weiss have identified legitimacy as an important attribute of sovereignty, arguing that “the supremacy of sovereignty over law is untenable.”¹³⁵ In their view, the conventional (Hobb’sian-“realist”)

¹³² “Repression and Violence in Kosovo”, p. 7.

¹³³ . See Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W. W. Norton, 1988).

¹³⁴ McCwire, “Why did we bomb Belgrade?”, p. 5, our emphases.

¹³⁵ Jarat Chopra and Thomas G. Weiss, “Sovereignty is No Longer Sacrosanct: Codifying Humanitarian Intervention”, in *Ethics & International Affairs*, Vol. 6 (1992), p. 106. See also p. 103.

tendency to exalt sovereignty *over* human rights is in decline, giving way to a growing tendency to link the two, with Natural Law often serving as the link.¹³⁶

J. Samuel Barkin, in an article for *Millennium*, comes to a similar conclusion, urging that “sovereignty has always been subject to legitimising principles,” and that

to the extent that ‘sovereignty’ as an operational norm follows, rather than precedes, some form of legitimation of sovereignty as a principle, the internationalisation of human rights can be seen as an evolution of the constitution of sovereignty, rather than as a challenge to it.¹³⁷

Or again, Michael J. Smith, in an article for *Ethics & International Affairs*, argues that “...a state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty.”¹³⁸ These writers – Chopra, Weiss, Barkin, and Smith – are, thus, closer in spirit to Bodin and Maritain, in their understandings of sovereignty, than they are to Hobbes or Machiavelli. One might even group them together as advocates of variants of *relational sovereignty*.

The NATO intervention against the FRY placed “sovereignty” in the limelight. But, setting aside the issues as to whether NATO had the authority to decide on military action in the absence of a UN mandate and whether the campaign itself was waged in accord with international humanitarian expectations and international law,¹³⁹ the intervention forced observers to confront the issue squarely as to whether sovereignty could be, as Hobbes had claimed, absolute and antecedent to law itself or whether, as we have argued, sovereignty must be seen as an emanation of legitimacy, which is to say, derivative from

¹³⁶ *Ibid.*, p. 111.

¹³⁷ J. Samuel Barkin, “The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms”, in *Millennium*, Vol. 27 (1998), No. 2, p. 229.

¹³⁸ Michael J. Smith, “Humanitarian Intervention: An Overview of the Ethical Issues”, in *Ethics & International Affairs*, Vol. 12 (1998), p. 76.

¹³⁹ These issues are discussed in Julie Mertus, “Beyond Borders: The Human Rights Imperative for Intervention in Kosovo”, in *Human Rights Review*, Vol. 1, No. 2 (January—March 2000), pp. 78—87.

Natural Law. While decisions taken on the ground will inevitably be decisions which serve the interests alternatively of either Albanians or Serbs, the universalist perspective draws attention to the sources of collective discontent and destabilization, which might never have developed had Belgrade constructed a legitimate political system, and to the imperative of looking beyond ethnicity to legitimate politics, in seeking solutions for the region.

MONTENEGRO AND YUGOSLAVIA:
DISASSOCIATION, NEGOTIATION, RESOLUTION?

Philip Lyon

In the introduction to Milovan Djilas' *Land without Justice*, William Jovanovich calls the people of Montenegro "Serbian by nationality, Orthodox by faith, [and] Montenegrin by choice."¹ As Montenegro begins the 21st Century, this assessment has perhaps never been so apt or so mistaken. Montenegro, still nominally bound to Serbia in a joint state, is a divided country and has spent much of the past several years wrestling with the prospect of its own formal independence. Since the elections in April 2001 returned an ambiguous majority to the Montenegrin Parliament, Serbia and the Federal administration have also devoted themselves to this topic and have engaged with Podgorica over whether, where and who should negotiate either a radically redefined federation or else Montenegrin independence.² In spring 2002, Serbian, Montenegrin and Yugoslav representatives reached an EU-brokered agreement to establish the new state of "Serbia and Montenegro." Until the institutions of that new state are constituted in Fall 2002, however, the Federal Republic of Yugoslavia (FRY) remains a country without a valid constitution or a functional government. It is a "hollow edifice whose institutions hardly function except as an address for the international community."³ In any event, the locus of real power will remain in the republics. In fact, Montenegro has been not just autonomous or even sovereign, but *de facto* independent for several years. In many ways, therefore, the question has not been whether there would be an

¹. William Jovanovich, "Foreword" to Milovan Djilas, *Land without Justice* (New York: Harcourt Brace and Company, 1958), p. xi.

². Podgorica, formerly known as Titograd, is the capital of Montenegro.

independent Montenegro, but rather whether there would be a redefined federation.

Montenegro's moves towards disassociation from Yugoslavia have not occurred in isolation. Rather, they have largely been products of and reactions to actions taken by Milošević during his reign and thereafter by his successors in Serbia and FRY. Montenegro's actions stem from Montenegro's rejection of the inadequate 1992 constitution and Milošević's 2000 constitutional amendments designed to sideline the obstreperous junior republic. Economic arguments are also involved, as are local power politics. Indeed, Montenegrin President Milo Djukanović's stubbornness in negotiations with Belgrade was partly tied to the need to satisfy his stridently separatist coalition partners in order to keep his own party, the Democratic Party of Socialists (DPS),⁴ in power.

The debate which has raged between Podgorica and Belgrade has been fundamentally connected with questions of sovereignty. Sovereignty is an inherently slippery concept which is imbued with tremendous moral and legal power while being simultaneously difficult to isolate or define. Perhaps it is sovereignty's multiplicity of meanings and interpretations that have made it so compelling for theorists and politicians for centuries. Sovereignty in turn is predicated on who or what is sovereign. That is, where does supreme and permanent authority lie in a state or society? As Sabrina Ramet observes in the conclusion to this monograph, sovereignty has been mobilized in the collapse of Yugoslavia by nationally construed, secessionist republics as connoting entitlement to independence. Such normative language has not been totally absent from the Montenegrin political dialogue and Podgorica's moves toward disassociation from Yugoslavia, but I argue that the debate in that complex society has been highly nuanced and heavily reflective of the writings of John Locke. I argue that the repatriation under Djukanović of legal, economic and

³. "Montenegro: Resolving the Independence Deadlock", *International Crisis Group* (1 August 2001), p. 61.

political authority to Podgorica was justified and perhaps necessary as resistance to the tyranny which was Milošević's arbitrary rule. While the language of "historic" and "states' rights" has intruded on the political debates surrounding Montenegro's bid for formal independence, it is essential to first understand that Podgorica's reassertion of authority over Montenegrin affairs was not a usurpation of power, but rather a resistance to Milošević's tyranny. The logical conclusion of this resistance, however, is not yet certain. Certainly, Montenegro has legitimate grounds for formal secession from its dysfunctional joint state with Serbia. However, formal independence is desired by barely half of the population, for whom the final division of the joint state with Serbia is as much a question of identity as sovereignty.

Ultimately, I find a divided society in Montenegro that is less comfortable with its political allegiances than either the pro-independence or pro-Yugoslav groups would prefer to admit. Montenegro is remarkably diverse for its size and has a sense of identity that extends beyond the usual national straitjackets. The history and symbolism of the vanished Montenegrin state have provided some of the language in the debate over separation from FRY, but the driving force behind the Montenegrin independence movement may be the least nationalist in the Balkans.

Serbs by another name

In 1908 *National Geographic* produced an eponymous article on "Serbia and Montenegro" which observed that "both countries are peopled by the Serbs" but recognized an exceptional Montenegrin character.⁵ The author approvingly called Montenegrins a warrior race but noted that each possessed "the bearing and dignity of a gentleman," and they were "easily distinguishable from the

⁴. Demokratska Partija Socijalista Crne Gore.

⁵. Gilbert Harvey Grosvenor, "Serbia and Montenegro" in *National Geographic* (November 1908), p. 774.

Servians."⁶ Similarly, English poet Alfred, Lord Tennyson (1809-1892), celebrated "Great Tsernogora!" and called its inhabitants a race of faithful and free "mighty mountaineers."⁷

It should first be observed that Montenegro is a remarkably diverse place. In addition to the 61.7% of the population that identified itself as "Montenegrin", the 1991 Yugoslav census found 9.3% were Serbs, 14.5% Muslims, 6.5% Albanians, 1% Croat, and 8% "other." The presence of large number of refugees from Croatia and Bosnia must further alter these numbers, most likely to the benefit of the Serb population. The Montenegrin government estimated the republic's population in 1998 as 650,575 inhabitants, compared with Serbia's population of about 10,000,000.⁸ Montenegrins have always lacked a broad consensus on whether they are their own nation or a distinct branch of the greater Serbian people.⁹ Nevertheless, they have a historical distinction from the Serbs in that they were the only Balkan people to successfully resist Ottoman conquest.

In 1918 Montenegro's monarch was deposed and the country was absorbed into the Kingdom of Serbs, Croats and Slovenes. Many Montenegrins never became fully reconciled to their loss of independence, however. A Christmas Uprising occurred in 1919 and the monarchist, separatist "Greens" fought a guerrilla war against Yugoslav forces until 1926.¹⁰ Milovan Djilas observes that a majority rejected inclusion into Yugoslavia and writes "Old Montenegro was all out of joint. Her mountains and crags still stood, but she herself had fallen, sunken in hatred and blood, seeking but unable to find

⁶. *Ibid.*, p. 783.

⁷. Alfred Lord Tennyson, *Montenegro*, available at <http://www.fordham.edu/halsall/mod/tennyson-montenegro.html>.

⁸. Available at www.montenegro.yu. The Montenegrin government expected to conduct a census in the spring of 2002. At present, however, it appears that that census will be postponed because of local elections in the republic and a possible referendum.

⁹. Patrick Moore, "Montenegro at a Crossroads." *RFE/RL Newslines* Vol. 5, No. 77. Part II. 20 April 2001. Available at www.rferl.com.

herself."¹¹ Serb-Montenegrin relations remained tense throughout the interwar period and during World War Two, Montenegrin autonomists took up arms against Chetniks and Partisans.¹² Under Tito, Montenegrins received their own titular republic and were recognized as a distinct nationality by the 1946 constitution. Many Montenegrins, including Djilas, came to wholly endorse Yugoslavia.¹³ Nevertheless, tension persisted.

Sabrina Ramet observes that two basic strains of Montenegrin nationalism persisted in the post-war period, one stressing the close kinship between two branches of one Serbian nation and the other emphasizing the uniqueness of the Montenegrin nation. This latter group took anti-Serbianism as its program and was ascendant in the late 1960s and early 1970s.¹⁴ The former group of essentially Serbian nationalists persisted, however, and by the 1980s there was tension between them and the coastal Yugoslav republic became rather polarized.¹⁵ In a symbolic move, the remains of King Nicholas and other Montenegrin royals were returned to Montenegro in 1989 and reinterred in Cetinje amid much fanfare. The Montenegrin leadership nevertheless supported Milošević and his Serb nationalist project and the reformed League of Communists of Montenegro won the first free elections in Montenegro in 1990. However, while many Montenegrins eagerly participated in the wars against Bosnia and particularly Croatia, others remained uneasy, and by the mid-1990s, Montenegro was moving to dissociate itself from Milošević's Yugoslavia.

¹⁰. Jeff Chu, "Time Trail: Montenegro", available at <http://www.time.com/time/europe/timetrails/montenegro/>.

¹¹. Djilas, *Land without Justice*, p. 99.

¹². Viktor Meier, *Yugoslavia: A History of its Demise*, trans. from German by Sabrina Ramet (London and New York: Routledge, 1999), p. 83.

¹³. Indeed, Djilas thought of himself as a Yugoslav and objected being called Montenegrin. – Jovanovich, "Foreword", p. xi.

¹⁴. Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, 2nd. ed. (Bloomington, Ind.: Indiana University Press, 1992).

¹⁵. *Ibid.*, p. 212.

Montenegro's political landscape

Until Spring 2002, the Montenegrin political landscape could be basically reduced to several political parties operating in two contending coalitions, Victory for Montenegro and Together for Yugoslavia.¹⁶ The coalitions were of nearly equal strength, allowing the small Liberal Party to act as a kingmaker in the Montenegrin Assembly. The towering figure of Montenegrin politics for at least six years has been Milo Djukanović of the DPS, currently the Montenegrin President. The Victory for Montenegro – Democratic Coalition for Milo Djukanovic (now known as Democratic List for European Montenegro - Milo Djukanović) is, as the name would imply, the coalition of Montenegro's president.¹⁷ It consists of two parties, the DPS and the Social Democratic Party of Montenegro (SDP), which ran together in the April 2001 parliamentary elections.¹⁸ Ironically, the DPS is actually the former Montenegrin division of the League of Communists¹⁹ and Milošević was able to count the Montenegrins and particularly Momir Bulatović among this closest supporters in the late 1980s and early 1990s. In 1992, the DPS assumed its current name and by 1997 the party was split into two factions respectively led by Momir Bulatović and Milo Djukanović. Djukanović himself had previously been a Milošević loyalist but now sought to distance his party from the Serb strongman. Bulatović, however, remained one of Milošević's closest allies. When the Djukanović-led faction prevailed in 1997, Bulatović departed the party to form the Socialist People's Party (SNP).²⁰ Although still the largest party in Montenegro, the DPS has since had to rule in coalitions. Its leader, Djukanović, became Montenegrin Prime

¹⁶. Zajedno za Jugoslaviju.

¹⁷. Pobjeda je Crne Gore – Demokratska Koalicija Milo Djukanovic. Montenegro's political scene has been in turmoil for the past several months and there has been serious tension within this coalition. However, at this writing, it appears that the coalition of the DPS and SDP will participate in the upcoming parliamentary elections under the name "Democratic list for European Montenegro - Milo Djukanovic"

¹⁸. Socijal Demokratska Stranka Crne Gore.

¹⁹. Under the SFRY system, republic Leagues of Communists were highly autonomous and effectively acted as individual parties.

Minister in February 1991 at the age of 29 and was elected President of the Republic in 1997.²¹ At this writing, Filip Vujanović, also of the DPS, is the current Montenegrin Prime Minister.

The DPS's smaller coalition partner, the SDP, is strongly pro-independence and draws its support largely from well-educated and urban Montenegrins. It is currently led by Žarko Rakčević. The party has long been an advocate of a “sovereign and internationally recognized country” in a union with a similar Serbia. In January 2001, however, the DPS and the SDP went further, calling for international recognition of Montenegro.

The Liberal Alliance of Montenegro (LSCG)²² has occupied an awkward position in the country during the last decade and until recently operated as an awkward partner with the DPS and the SDP. Although it shares certain views with the Victory for Montenegro coalition, the LSCG did not join DPS in government until 2001 and in many ways continued to act like an opposition party. The Liberals support open borders, regional cooperation (including with former Yugoslav republics), and Montenegrin participation in European integration. Founded in 1990, the LSCG has persistently opposed Milošević and the wars of Yugoslav succession. It has furthermore never recognized the 1992 establishment of the Federal Republic of Yugoslavia, Milošević's rump state which he intended to succeed the defunct Socialist Federated Republic of Yugoslavia (SFRY). Under the leadership of its current President Miodrag Živković, and President of the Parliament Vesna Perović, the LSCG has been Montenegro's most persistent pro-referendum and pro-independence party. The party presently holds six seats in the Montenegrin parliament.

Djukanović's Victory for Montenegro coalition is opposed by the Together for Yugoslavia coalition consisting of the Socialist People's Party

²⁰. Socijalistička Narodna Partija.

²¹. When he was inaugurated president in 1998, SNP and Milošević supporters staged several days of protests featuring toughs bussed in from Serbia, a Milošević tactic from the early 1990s.

(SNP), the People's Party of Montenegro (NS),²³ and the Serbian People's Party (SNS).²⁴ As its name implies, this coalition supports union with Serbia, though in a somewhat redefined federation. The coalition contains many pro-Serb elements, but does not include the Serbian Radical Party (SRS) for example, which denies the existence of a separate Montenegrin nation. Together for Yugoslavia also attracts the votes of some minorities that fear the results of further Yugoslav dissolution. The SNP was founded in 1998 after the split in the DPS. Originally headed by Momir Bulatović and now by Predrag Bulatović (no relation), the party opposes Montenegrin independence, favoring a continued relationship with Serbia. Indeed, the SNP has not endorsed Djukanović's moves to dissociate Montenegro from FRY and has been a regular receiver of financial and political support from Belgrade. While under Predrag Bulatović, the SNP has somewhat edged away from its pro-Milošević past,²⁵ it nevertheless consists of largely unreconstructed friends and allies of Milošević who pedal threats of ethnic conflict and block cooperation with the ICTY. Unlike the Victory for Montenegro coalition, the SNP did not boycott the September 2000 elections and thus holds all but one seat (which went to its coalition partner, the SNS) in the Federal Parliament. The SNP was thus assured the role of the FRY Prime Minister under Serb Koštunica, because the FRY constitution stipulates that the state's Premier and President cannot hail from the same republic.

The SNP's two coalition partners were once one party and were allied with the DPS and the SDP. The NS, presently headed by Dragan Šoć, has additionally been allied previously with the LSCG. Though the NS has moderated its once fiercely pro-Serb tone, it still supports the preservation of a

²². Liberalni Savez Crne Gore.

²³. Narodna Stranka Crne Gore.

²⁴. Srpska Narodna Stranka.

²⁵. SNP continues to oppose cooperation with the ICTY, however, and in 2001 its representatives in the Federal Assembly blocked the passage of legislation that would have allowed FRY to extradite indicted war criminals to the Hague.

joint state with Serbia. The NS split with DPS and SDP as a result of those parties' pro-independence January 2001 platform, precipitating the April 2001 elections. A more extreme faction of NS later broke away to form SNS under Božidar Bojović. Because the principal reason for the NS's defection from the Victory for Montenegro Coalition had been the DPS/SDP platform advocating increased sovereignty and international recognition, Montenegro's 22 April 2001 parliamentary elections were well understood to be an unofficial referendum whether to hold a referendum on independence. Djukanović's coalition campaigned on the promise of holding an independence referendum. The coalition saw in the forced elections an opportunity to secure enough seats in the Montenegrin parliament to reach the 2/3 majority required for any changes to the Montenegrin constitution and thus, independence.

The National Democratic Institute has demonstrated that economic considerations and not independence were actually foremost in the minds of voters in the run up to 22 April. Nevertheless, rhetoric about independence dominated the campaign.²⁶ The Victory for Montenegro coalition consistently emphasized the impossibility of achieving equality with Serbia in such a lopsided and twisted federation even after Milošević's ouster. The Together for Yugoslavia coalition by contrast stressed the uncertainties and perils of Montenegrin independence. In particular, the pro-Yugoslav coalition stressed the potential dangers of further Yugoslav dissolution posed to Montenegro's ethnic minorities while simultaneously emphasizing the danger which separatist elements of those ethnic groups could pose to Montenegro itself. NS leader Dragan Šoć declared ominously that it should not be left to Muslims and Albanians to decide the fate of Montenegro but rather should be the decision of the country's Orthodox population.²⁷ Such rhetoric is not atypical of the pro-

²⁶. National Democratic Institute for International Affairs. "Press Release: Economy Remains Most Important Issue for Montenegro's Voters." 12 April 2002, available at www.ndi.org

²⁷. "Montenegro: Time to Decide", in *International Crisis Group* (18 April 2001), pp.6--7.

Yugoslav coalition, which has at times made inflammatory or menacing statements regarding the dangers poised to and by Montenegro's minorities should the republic achieve formal independence. By contrast, Djukanović tends to draw support from the country's minorities.²⁸

Though they failed to win a majority, the Together for Yugoslavia coalition celebrated the election results as a victory. In truth, however, the election results showed neither side to have a proper mandate in Montenegro. Djukanović's coalition won 36 mandates and Together for Yugoslavia earned 33 in the 77-seat chamber, placing the LSCG in the role of kingmaker with its six seats.²⁹ Thus, though there was a majority voice for Djukanović, it was a weak one. Despite failing to secure a 2/3 majority, pro-independence forces nevertheless vowed to persevere with a referendum. After 6 weeks of negotiations, DPS and SDP entered into a coalition with the stridently pro-independence Liberals. A poll taken before the election had indicated such an outcome. Of decided voters, 55.6% supported an independent Montenegro and 44.4% opposed leaving Yugoslavia.³⁰

Evolution of a sovereign state

That such energy should be spent on a formal assertion of Montenegrin independence is perhaps not surprising, but the fact is that Montenegro has been virtually independent for all intents and purposes for several years. The kernel of independence was planted and gradually nurtured by Djukanović and his supporters for a number of reasons. It became evident to many Montenegrins that the costs of association with Milošević's "Yugoslav" pariah state were outweighing the benefits. Furthermore, the economic costs of international

²⁸. A pro-Yugoslav position however, is not necessarily indicative of xenophobia or nationalism. Often positions on independence follow regional and generational lines.

²⁹. Two small Albanian parties also won one seat each.

³⁰. "Poll by CEDEM and DAMAR Agency: 55.6% of Citizens of Montenegro would vote for Independence" (5 April 2001), available at <http://www.b92.net/crnagora/keyfacts/cedem.php>

sanctions and hyperinflation (as well as lost tourism revenues) were self-evident. That Montenegro could never have the equality with sister republic Serbia as promised in the FRY constitution appeared certain by the mid-1990s. Additionally, Montenegrins, many of whom had participated in the siege of Dubrovnik in 1991, began to tire of Milošević's wars. Indeed, the republic remained "neutral" throughout the Kosovo conflict.

Regarding the distinction already made in this monograph between Jean Bodin's and Thomas Hobbes' notions of sovereignty, it almost goes without saying that the *modus operandi* of the Milošević regime was to proceed with a Hobb'sian arrogance for power thinly cloaked with appeals to Bodin's notions of the secular sovereign's morally limited authority. Milošević was careful to establish a veneer of legality around his actions but in fact acted arbitrarily to secure his own objectives. Milošević's amendments to the FRY constitution that altered the nature of that state at the expense of impotent Montenegro stand as a supreme example of precisely such arrogance and will be treated later in this essay.

Montenegro's *de facto* independence emerged gradually as Podgorica assumed federal competencies and disregarded federal institutions, and FRY authorities abused the constitution or manipulated federal structures to the exclusion and detriment of Montenegro. Montenegro began the 1990s not as an upstart republic but as Serbia's supplicant. On a republican level, one could say that the disintegration of the SFRY began in Montenegro with Milošević's engineering of the replacement of the republic's leadership with his supporters. Viktor Meier observes that this event beyond Serbia's borders demonstrated to other republic leaders that Milošević intended to dominate not just Serbia but all of Yugoslavia.³¹ Yet if by the fall of 1989 Montenegro was "for all practical

³¹. Meier, *Yugoslavia*, p. 83.

purposes a colony of Serbia,”³² this would change dramatically in the coming years as lost wars and hyperinflation cast a pall over the tiny republic.³³

Milo Djukanović, a Milošević ally installed in 1991 as Prime Minister, began to distance himself from his patron during the mid-1990s. As previously noted, meaningful change occurred in 1997 with the split in the previously monolithic DPS and Djukanović’s defeat of Momir Bulatović in an October 1997 run-off election for the republic’s presidency.³⁴ The first anti-Milošević demonstrations occurred on 28 July of that year as local police merely looked on.³⁵ Later that year, Djukanović called Milošević “an outdated politician” and baldly declared the question for Montenegro was “whether we want to enter the 21st century as a democratic and free Montenegro or become some insignificant appendage to an undemocratic regime.”³⁶

Previous to his election as president, Montenegrin Prime Minister Djukanović used his votes in the FRY parliament to block constitutional changes that would have granted the FRY President sweeping powers. Milošević had become FRY President in July 1997 and sought to replicate the authority he had enjoyed in Serbia in the more figurehead role of FRY executive.³⁷ Milošević largely exercised power, however, through his personal authority and the removal of those disloyal to him. Recognizing Djukanović as a threat, Milošević orchestrated demonstrations which threatened to block Djukanović’s inauguration as president in early 1998.

³². Sabrina P. Ramet, *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the War for Kosovo*, 3rd ed. (Boulder Colo.: Westview Press, 1999), p. 40.

³³. Eric Gordy observes that by January 1994, the height of hyperinflation, the monthly inflation rate was 313,563,558%. See Eric D. Gordy, *The Culture of Power in Serbia : Nationalism and the Destruction of Alternatives* (University Park, Pa.: Pennsylvania State University Press, 1999), p. 170.

³⁴. On 20 May 1998, Bulatovic was appointed Prime Minister of FRY.

³⁵. Jane Perlez, “Serbia’s Last Ally in the Yugoslav Breakup is Restive” in *The New York Times* (7 August 1997), available through Lexis Nexis.

³⁶. Chris Hedges, “Rival’s Victory in Montenegro Weakens Milosevic” in *The New York Times* (21 October 1997), available through Lexis Nexis.

³⁷. *Ibid.*

Henceforth, a pattern would develop whereby Milošević would attempt to exclude Montenegrins from federal functions and subject the republic to economic blockade or harassment. Meanwhile, Montenegro would try to assert itself as well as possible at the federal level while simultaneously distancing itself from Belgrade. As such, Podgorica came to assume ever more federal areas of responsibility as its own. As a means of undermining the Milošević regime, the United States and the European Union openly supported the Djukanović government's rebellion through aid and the relaxation of economic sanctions. In addition, Montenegro gradually developed its own ties with NATO and the EU. Over the course of several years, Podgorica came to achieve *de facto* independence from Belgrade's authority.

One may find a theoretical underpinning for Djukanović's defiance of Belgrade in John Locke's *Two Treatises of Government* (written 1679–80, published 1690). Locke observes, in that context, that a usurper of power "can never have Right on his side." Should that Usurper alter the forms and rules of the government beyond those which previously belonged to the lawful government, "'tis *Tyranny* added to the Usurpation."³⁸ Indeed, the Milošević regime and its apologists ruled arbitrarily, habitually denying political and human rights to the citizens of FRY and regularly abrogating the state's constitution. Simultaneously, Milošević's policies and cronyism launched the country into an economic freefall from which it has yet to properly recover. In a state such as this, Montenegro and Djukanović may be admired for their defiance. As Locke puts it,

Whosoever uses *force without Right*, as every one does in Society, who does it without Law, puts himself into a *state of War* with those, against whom he so uses it, and in that state all former Ties are cancelled, all other Rights cease and every one has a *Right* to defend himself, and to *resist the Aggressor*.³⁹

³⁸. John Locke, *Two Treatises of Government*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1960), p. 397.

³⁹. *Ibid.*, p. 419.

To Milošević's consternation and fury, Djukanović did resist. In the run up to the June 1998 Parliamentary elections, Victory for Montenegro's opponents charged Djukanović with being a tool of the West and Islamic forces (because he received support from Montenegro's Albanian and Muslim communities). At political rallies, Milošević supporters inveighed against "Milo the Turk!" while Djukanović's supporters retorted, "This is not Serbia!"⁴⁰ After Djukanović's coalition took 49.5% in the 1998 Montenegrin parliamentary elections, the Parliament declared that it would no longer respect laws promulgated by the FRY parliament; it would not recognize Bulatović's appointment as FRY Premier;⁴¹ and would henceforth disregard the will of now-FRY President Milošević.⁴² Milošević for his part blocked the transfer of pension and federal funds to Montenegro and banned President Djukanović from his federal roles. Meanwhile Djukanović began to build up the Montenegrin police as a potential counterweight to Milošević's Yugoslav Army (VJ).⁴³ The VJ's presence in Montenegro is significant, prompting one Montenegrin to complain in July 1999, "We live under Serbian occupation."⁴⁴

The Kosovo Crisis provided another opportunity for Djukanović to assert Montenegrin independence against Belgrade. During that conflict, Djukanović walked a tightrope between NATO and Belgrade and pronounced Montenegro "neutral." Unsurprisingly, the NATO bombing had a crystallizing effect in Montenegro and was a turning point for the government. The government essentially rejected the call up of Montenegrin reservists and new recruits into the army. By July 1999, Montenegrin authorities were promising to arrest

⁴⁰. Chris Hedges, "It's Serb vs. Serb in Montenegro Vote" in *The New York Times*. (28 May 1998), available through Lexis Nexis.

⁴¹. Momir Bulatovic was made FRY Premier in spring of 1998.

⁴². Hedges, "It's Serb vs. Serb".

⁴³. The Yugoslav Army was estimated at 25,000 in July 1999 against Djukanovic's 15,000 police. Associated Press. "Montenegro Begins to Talk with Belgrade on Gaining Autonomy" in *The New York Times* (15 July 1999), available through Lexis-Nexis.

⁴⁴. Chris Hedges, "Montenegrins, Angry Serbs, Talk of a Split", in *The New York Times* (10 July 1999), available through Lexis-Nexis.

anyone on the republic's territory indicted by the ICTY for war crimes. Then-Foreign Minister Branko Perović warned "We will arrest the first person who attempts to operate here in a federal uniform" adding "we do not recognize federal authority."⁴⁵ Additionally, the Montenegrin government had called for the withdrawal of VJ troops.⁴⁶

Ominously, the tension over Montenegro has produced a schism in the Serbian Orthodox Church in the republic and resulted in the reestablishment of the autocephalous Montenegrin Orthodox Church.⁴⁷ The revival of the Montenegrin Orthodox Church is a development of no small significance, since an autocephalous Orthodox Church is traditionally seen as the repository of national identity and legitimacy in the Orthodox world. Thus, a bid for a Montenegrin Orthodox Church strongly suggests a bid for separate statehood and has been harshly rejected by the Serbian Orthodox Church. Violence and confrontation between members of the rival churches is not unknown.

The FRY/Serbia and Montenegro also came to confront each other economically. By spring 1999, the Yugoslav Army was setting up periodic roadblocks to attempt to enforce payment of FRY taxes and customs duties (which Podgorica had refused to pay) or otherwise block goods from entering Montenegro from Serbia.⁴⁸ By spring 2000, Serbia had imposed a strict ban on the shipment of goods between Serbia and Montenegro.⁴⁹ And perhaps most significantly, after several months of a dual currency system with the Yugoslav

⁴⁵. *Ibid.*

⁴⁶. The destruction in Serbia due to NATO bombing was far worse than in Montenegro, providing another economic argument to those who anticipate swift economic growth following independence from FRY.

⁴⁷. The Montenegrin Orthodox Church was abolished under King Alexander Karadjordjevic in 1920.

⁴⁸. Hedges, "Montenegrins, Angry Serbs".

⁴⁹. Carlotta Gall, "Blockade is Raising Tension for Serbia's Smaller Partner" in *The New York Times* (2 April 2002), available through Lexis-Nexis.

Dinar, Montenegro introduced the DM as its official currency in November 2000.⁵⁰

Also in 2000, the Montenegrin government declared that it could no longer recognize the Yugoslav Army as a legitimate authority in Montenegro.⁵¹ The Yugoslav Army remains in Montenegro, however, and is one of only a few federal institutions still present in Montenegro. By summer of 1999, Montenegro had abolished visa requirements and even set up its own airline. Having already rejected the legitimacy of FRY, Djukanovic dismissed the prospects for fair elections to the Federal presidency and his supporters boycotted the September 2000 elections. As previously observed, the pro-Yugoslav opposition, however, did participate, winning every Montenegrin seat in the Federal Assembly.

So currently, Montenegro may be said to exercise the sovereignty of an independent state in numerous ways. The Montenegrin Central Bank is an independent institution from the Yugoslav National Bank and in fact the two banks have little to do with each other. The official currency in the republic (in which virtually all transactions take place) is the Euro, which further frees the Montenegrin economy from Belgrade's influence by denying the Yugoslav National Bank the ability to determine monetary policy there.⁵² Although Montenegro lacks a proper military, the Montenegrin police act as an ersatz defense force. The elected government only acknowledges the FRY regime in the most limited and reluctant of ways. The republic effectively runs its own foreign policy through the Montenegrin Ministry of Foreign Affairs and has successfully asserted a separate foreign policy from Belgrade's. Montenegro's "trade missions" serve as self-styled embassies and consulates in Washington,

⁵⁰. The DM was replaced by the euro following the introduction of euro notes in January 2002.

⁵¹. "Current Legal Status of the Federal Republic of Yugoslavia and of Serbia and Montenegro", in *International Crisis Group* (19 September 2000), p. 32.

⁵². Edmund L. Andrews, "Euro is a Hit in Montenegro (Yes, Montenegro)", in *The New York Times* (17 January 2002), available through Lexis-Nexis.

Brussels, and elsewhere. Since 1999, Montenegro has operated a distinct visa regime from FRY. Montenegro maintains border controls with Serbia and asserts its own customs regime and collects duties on trade. The Serbian Orthodox Church has suffered a split with the establishment of an autocephalous Montenegrin Orthodox Church, traditionally seen as a source of national legitimacy and assertion of national identity.

After Milošević's ouster, the Montenegrin government insisted that little had changed in the FRY and that therefore the coastal republic could not expect fair treatment within the federation or proper representation by the FRY on the international stage. In addition to the pervasive belief that democratic Montenegro will prosper and integrate into the EU faster without the dead weight of the FRY, Montenegrin authorities have based their claims to independence on a number of grounds, including illegal acts and constitutional abuses that occurred under the Milošević regime. The chief such abuse was the amending of the FRY constitution that relegated Montenegro to second-class status in the so-called federation. Because of the conduct of the Milošević regime even before the passage of constitutional amendments in July 2000, however, the FRY constitution may be said to have already been seriously in breach, raising the matter of the legitimacy of the joint state. Podgorica has thus assumed most of the key functions of the federal state and one Deputy Premier of Serbia recently acknowledged, "Montenegro is de facto independent."⁵³ Thus, even before the EU brokered agreement establishing "Serbia and Montenegro" one may have been forgiven for asking if the FRY properly existed at all.

⁵³. Žarko Korac, Deputy Prime Minister of Serbia at the Swiss Foundation for World Affairs conference "Stabilizing and Reconciling the Balkans" at the Johns Hopkins University School of Advanced International Studies (23 October 2001).

Altered states

The 1992 constitution of the Federal Republic of Montenegro opens by citing the “determination of its [Montenegro’s] citizens for Montenegro to continue to live in the joint state of Yugoslavia as a sovereign and equitable republic.”⁵⁴ Such an arrangement appears guaranteed by Article 1 of the 1992 Constitution of the Federal Republic of Yugoslavia which states that the FRY shall be “a sovereign, federal state, founded on the equality of its citizens and the equality of its member republics.”⁵⁵ Furthermore, the constitution observes that the state is founded upon the rule of law and stipulates that “Executive and judicial powers shall be subject to law.”⁵⁶ Finally, authority in the FRY, according to article 12 is to be organized on the principle of separation of powers between the legislature, executive, and judiciary. On all of these accounts, the FRY failed its constitution, thereby imperiling its legitimacy.

By exercising his control of the Federal Constitutional Court, Milošević in 1998 blocked Montenegro from installing its legally appointed representatives in the upper house (Chamber of Republics) of the federal parliament, supposing them to be more loyal to Djukanović than himself.⁵⁷ As such, the previous Montenegrin delegation retained their seats and Milošević was able to guarantee his influence over that institution. Thus went a pattern where Milošević did not circumvent formal institutions but rather controlled them through his proxies to exclude obstreperous Montenegro from its rightful influence in the affairs of state. In addition to locking out the new Montenegrin deputies from the upper house, disloyal representatives from Montenegro were removed from the Yugoslav National Bank, the Ministry of Foreign Affairs, the Supreme Defense

⁵⁴. Constitution of the Republic of Montenegro (1992), available through www.mediaclub.cg.yu. Preamble.

⁵⁵. Constitution of the Federal Republic of Yugoslavia (1992), Article 1, available through www.gov.yu.

⁵⁶. *Ibid.*, Article 9.

Council, the Federal Constitutional Court, and the Federal Supreme Court.⁵⁸ Montenegrin representatives insist the Federal Constitutional Court was beholden to Milošević. Indeed, the International Crisis Group observes that the Federal Constitutional and Supreme Courts trespassed beyond their strictly federal jurisdiction when they declared invalid the election process for the Montenegrin Presidency (1997) and Montenegrin Parliament (1998). The Courts had no business in republic affairs.⁵⁹

In addition to demonstrating the clear lack of separation of executive, legislative, and judicial authority in FRY, the barring of the newly elected Montenegrin representatives to the Chamber of Republics was particularly important because this body was the only one where the Montenegrin republic had absolute parity with the much larger Serbia. It was only here that Montenegro could meaningfully exercise influence on the federal level through its veto power over legislation, the election for the FRY President, or the selection of the federal government. Thus, when Milošević barred the appointed deputies, the Montenegrin government pronounced the FRY's chief bodies to be illegal and illegitimate. The constitution was in breach.⁶⁰ Finally, during the summer of 2000, Milošević and his cohorts rammed through a collection of constitutional amendments designed to enhance the position of the FRY presidency while reducing even Montenegro's lingering formal influence in FRY affairs.

Montenegro was being constitutionally shut out of FRY matters. The impact of these amendments was immediately recognized in Montenegro and by the Serbian opposition. Then opposition politician Žarko Korac (now Serbian Deputy Prime Minister) called the amendments “almost a death blow to the

⁵⁷. Milošević insisted that the previous MPs' mandates simply be extended. -- “Montenegro Begins Talks with Belgrade on Gaining Autonomy” in *The New York Times* (15 July 1999), available through *Lexis-Nexis*.

⁵⁸. “Current Legal Status”, p. 20.

⁵⁹. *Ibid.* p. 23-25.

⁶⁰. *Ibid.* p. 23.

Yugoslav federation.”⁶¹ Vuk Drašković called the amendments “legal terrorism”⁶² while his Serbian Renewal Movement warned “The Yugoslav constitution was torn apart and the final stage of the destruction of the Federal state” begun. The changes furthermore “fully destroyed the statehood of Montenegro.”⁶³ Meanwhile, Zoran Djindić’s Democratic Party concurred, charging the new constitution as “both the annulment of the federal state and a push to drive Montenegro out of Yugoslavia.”⁶⁴ Miodrag Vuković, advisor to President Djukanović, stated bluntly that the changes “amounted to the constitution of a new country.”⁶⁵ The amendments were adopted in approximately two hours without proper review by the Constitutional Committee of the Parliament or public debate. Podgorica was not even consulted on the amendments, a fact which the International Crisis Group asserts violates the parity principle enshrined in Article 1 of the FRY Constitution.⁶⁶

General dynamics

The struggle to redefine the FRY or achieve formal Montenegrin independence cannot be viewed from a single angle. Indeed, the battle for the future of FRY and Montenegro contains several other, sometimes interlocking, dynamics. In Montenegro, local politicians struggling over power in the republic sometimes resemble medieval notables battling to control a fiefdom.⁶⁷ Djukanović and the

⁶¹. Paul Watson, “Milosevic Rewrites Constitution in Bid to Extend his Rule” in *The Gazette* (Montreal), 7 July 2000, available through Lexis-Nexis.

⁶². *Ibid.*

⁶³. Deutsche Presse-Agentur. “Serbian Opposition Condemns Constitutional Amendments.” (6 July 2000), available through Lexis-Nexis.

⁶⁴. Deutsche Presse-Agentur. “Serbian Opposition Condemns Constitutional Amendments.” (6 July 2000), available through Lexis-Nexis.

⁶⁵. Steven Erlanger, “Change in Yugoslav Constitution allows Milosevic to Seek another Term as President” in *The New York Times* (7 July 2000), available through Lexis-Nexis.

⁶⁶. “Current Legal Status”, p. 28.

⁶⁷. Serious allegations against Djukanovic have been made by the Croatian weekly *Nacional*. According to *Nacional*, Djukanovic has been involved in cigarette smuggling, contract killings, and has amassed a fortune of 63 million USD. Indeed, Djukanovic is widely supposed to have mafia connections.

DPS have been no doubt sincere in their belief that Montenegro needs to totally redefine Yugoslavia or leave it, but there has been dissent even within the DPS over which of these alternatives is preferable. Within the DPS some forces have urged accommodation with Serbia/FRY. Meanwhile, the LSCG remains highly distrustful of its nominal ally, the DPS, and is increasingly strident in its demands for a referendum on independence. The LSCG's alliance with the DPS was conditional on a future independence referendum and, the Liberals made it amply clear during 2001-2002's independence negotiations that their cooperation in government remained contingent upon that referendum. Thus, Djukanović's DPS has had to struggle with itself, with its governing partner, and with the opposition Together for Yugoslavia coalition, which exclusively represented Montenegro in federal bodies⁶⁸ and regularly called Montenegro an authoritarian, personal state of Djukanović. As for the FRY president, the Montenegrin government continues to see in Koštunica not democratic renewal but a shrewd repackaging of the Serb nationalist project, which would achieve its aims at Podgorica's expense. As such, Montenegro has been very wary of FRY involvement in any negotiations on the future of the Federation and early on stipulated that SNP member and FRY Prime Minister Dragiša Pešić be excluded from the process.

Montenegro's minorities appear divided on the matter of independence, with Albanians being more in favor of separation from Serbia and Bosniak Muslims decidedly less enthusiastic. According to the International Crisis Group, leaders of Montenegro's Albanian political parties have repeatedly professed their loyalty to Montenegro. Nevertheless, opposition parties in Montenegro have been vocal and often provocative in expressing their fears that minorities would proceed to destabilize the country in the event of a declaration

⁶⁸. The decision of Djukanovic and DPS to boycott FRY elections in September 2000 meant that all but one of the Montenegrin seats on the federal level were won by SNP. The remaining seat went to its ally, SNS.

of independence. Such claims may be opportunistic, but they also suggest potentially real concerns.

The Serb-Muslim border is straddled by a swath of territory known as the Sandžak which contains a large majority of “Bosniak” Muslims. Cross-border movement by Serbs, Montenegrins, and Muslims alike is very common in this region, and it is not unusual for residents of one republic to work or visit family in the other. Accordingly, Muslims on both sides of the border have developed opinions on the subject of Montenegrin independence. One main concern is that Muslims would become scapegoats of frustrated Serbs and Montenegrins or that Muslims would suffer new oppression or expulsion with the formal division of the joint state. In October 2001, Muslim parties organized a pro-Yugoslav rally and in mid-February 2002 the International Democratic Union, the Bosniak Democratic Union and the Bosniak Democratic Party issued a joint statement in which they declared that they could never support “‘Berlin walls’ between Rozaje [Montenegro] and Novi Pazar [Serbia]” nor could they “interrupt communication with their relatives in the Serbian part of Sandžak.”⁶⁹ SRNA (Bosnian Serb News Agency) has also quoted the chairman of the International Democratic Union and former leader of the Party of Democratic Action in Montenegro as opposing a referendum in Montenegro as destabilizing and likely to deepen the current political crisis.⁷⁰

The OSCE believes Montenegro’s Muslims to be generally supportive of Djukanović and the DPS, the SDP, or the LSCG. Indeed, under Djukanović, Montenegro’s minority rights record has been impressive (for the region) and ethnic relations are generally good. Nevertheless, there have been allegations of abuse by Muslim leaders. The Chair of the Bosniak Society for example, has

⁶⁹. Statement by International Democratic Union, the Bosniak Democratic Union and the Bosniak Democratic Party in “We Do Not want Walls between Rozaje and Novi Pazar” in *Vijesti* (Podgorica), 11 February 2002, available through www.mnnews.net.

⁷⁰. Harun Hadžić in “Montenegro: Bosniak Politician Opposes Referendum” in SRNA News Agency (Bijeljina), 1612 GMT 11 February 2002, trans. in *BBC Monitoring Service*, available through www.ft.com.

remarked that Muslims in northern Montenegro live in fear and uncertainty and were increasingly moving to Novi Pazar. Muslim communities near the border in particular favor maintaining ties with Serbia for fear of their communities being divided. To forestall such a division, some Sandžak Muslims have considered calling their own referendum. Said Chairman of the People's Movement of Sandžak, Džemail Suljević,

The border cannot be at Mehov Krs and cannot be where it never existed in the first place. We do not contest the right of Podgorica and the current authorities in Montenegro to call a referendum, but we shall absolutely and very soon set an initiative in motion to call a referendum at the level of Sandžak so that the citizens can have a say in which state Sandžak should be. All citizens should take part [in the referendum], that is Bosniaks as well as Serbs and Montenegrins.

We propose or rather send a message to Mr. Djukanović and the current regime in Montenegro that if they want a secession of Montenegro then they have to choose between two issues – Sandžak and Montenegro, that is, to set up a new state called Sandžak and Montenegro or to have a lesser Montenegro or mini-Montenegro⁷¹

Even should this be mere hyperbole and such a Sandžak referendum never be held, that some Sandžak leaders so oppose the division of the region does not bode well for the future territorial integrity of an independent Montenegro.

Negotiations

While there is a Montenegrin nationalist element to Montenegrin separatism, it is hardly comparable to the nationalism that has reigned in Serbia or Croatia. It is true that much Montenegrin symbolism and heraldry has been employed by the separatists, and there are no doubt true nationalists involved in the separatist movement. As previously mentioned, however, many of the supporters of

Montenegrin independence are not Montenegrins at all or even Slavs. Rather they are Albanian. Montenegrin separatism is on one level a move toward “states’ rights,” a republic asserting its position in the FRY and also that of the historic Montenegrin state. It is also a reaction against the excesses and transgressions of FRY and Serbia. Perhaps most important from the negotiating point of view, Montenegrin separatism is a point of economic self-defense. The government of Montenegro may be expected to accept many things, but a return to the Dinar or even a unified customs regime with Serbia is unimaginable. Podgorica makes sound arguments about the need for an open trade regime and a monetary policy that is independent of Belgrade. (By adopting the Euro, of course, Podgorica has effectively surrendered monetary policy to the EU). Finally, the realities of coalition politics eliminated certain options for Djukanovic’s and Prime Minister Filip Vujanović’s government and have compelled the government to pursue independence. The DPS’s coalition partners long ago announced they would leave the government in the event of rapprochement with Belgrade, forcing new elections. Generally, these coalition partners are motivated much less by nationalism or even Montenegrin identity than by seeing secession as a way to move closer to Europe and safeguard or even advance reforms. Meanwhile, though advocates of a joint state no doubt include those who sincerely believe in the wisdom of continued union with Serbia, many of the opponents of separatism are basically unreconstructed friends and allies of Milošević who pedal threats of ethnic conflict and block cooperation with the ICTY. Besides opposing Montenegrin independence, they seem still committed to Milošević’s projects, if not that of Vojislav Šešelj.

Negotiations on the future of the federation took place in a number of forums involving a number of participants over several months. The meetings included FRY, Serbian, and Montenegrin political authorities, teams of

⁷¹. Džemail Suljevic in “If Montenegro Calls Referendum, Sandžak’s Bloc Will Do Likewise, Party Chairman” in Radio Novi Pazar. 1500 GMT 12 February 2002), trans. in *BBC*

“experts”, and finally Javier Solana and other EU representatives.⁷² Beside ways to reorganize the federation, Belgrade and Podgorica argued whether the future of the federation should be discussed at all, with the Montenegrin delegation proposing instead to define an alliance of independent states.⁷³ The talks occurred in Podgorica, Belgrade, and Brussels and occasioned alternately optimistic predictions and pessimistic grumbling. Vesna Perović, the fervently pro-independence President of the Montenegro Parliament captured the mood when she quipped that the worst aspect of the negotiations was that each meeting concluded only with the agreement to hold future meetings.⁷⁴ Throughout negotiations, Podgorica advocated a redefined union of internationally recognized, independent states; Serbia and FRY pushed for a loose federation; and the European Union has called for a “democratic Montenegro in a democratic Yugoslavia.”

A new sporazum

On 14 March 2002 Yugoslav, Serbian, and Montenegrin leaders signed the “Proceeding Points for the Restructuring of Relations between Serbia and Montenegro.” The document, which was signed under intense pressure by the European Union, redefines relations between the two remaining Yugoslav republics in an arrangement that Yugoslav President Vojislav Koštunica has insisted represents a true break with previous incarnations of Yugoslavia. In spite of their signatures on the above mentioned document, the Montenegrin President and Prime Minister (who have been accused of “treason” by their

Monitoring Service.

⁷². Groups of technocrats from FRY, Montenegro and Serbia have met to discuss monetary and economic problems, constitutional issues, and foreign policy and defense matters.

⁷³. FRY has sought to capitalize on apparent EU support for an enduring federation while Montenegro counts on its right to democratic self determination through a referendum, its democratic irrefutability.

⁷⁴. Vesna Perovic in “Solana and Djukanovic “Meeting to Arrange Meetings,” www.b92.net (11 February 2002), available through www.b92.net.

coalition partners)⁷⁵ have faced a difficult time in convincing many of their countrymen of the wisdom of the deal.

When Djukanović addressed the Montenegrin Parliament on 26 March 2002, he insisted that he and Vujanović were confident that the new arrangements were “good for Montenegro and all its citizens.” However, his subsequent remarks do not suggest his own deep conviction of that appraisal or that he expects many in Montenegro to share it. Djukanović’s speech was filled with some truth, some exaggeration, and some vagueness. However, the nature and details of the “Proceeding Points for the Restructuring of Relations between Serbia and Montenegro” suggest that the new arrangements are neither a permanent nor a real solution. Montenegro’s pro-independence forces have not been defeated, nor can the forces favoring a joint state with Serbia claim final victory. The new arrangement effectively recognizes the status quo in Yugoslavia and therefore does little to resolve the basic uncertainty surrounding the state. However, with Montenegrin opinion so closely divided over independence and the international community so unenthusiastic about Montenegrin separatism, such a non-solution may have been the only option for Montenegro’s leaders. As Djukanović said before the Montenegrin Assembly,

I think the agreement on redefining relations between Montenegro and Serbia to a large extent acknowledged the political reality in Montenegro, which objectively should result in a more favorable atmosphere for political processes. We who are present in this room today bear utmost responsibility for this. The agreement provides equal opportunity to the forces who prefer an independence option for Montenegro and to those who believe a joint state with Serbia is a better choice. This, too, is one of the qualities of the agreement: we have to observe it whether we like it or not.⁷⁶

⁷⁵. Slavko Perovic in “Perovic: Djukanovic ‘Explains the Treason’,” in *Publika*. (Podgorica), 27 March 2002, available through www.mnnews.net.

⁷⁶. Milo Djukanovic’s Address to the Montenegrin Parliament in “Montenegrin President Recommends Parliament Adopt Agreement with Serbia”, in TV Crna Gora at 1025 GMT (26 March 2002), trans. in *BBC Monitoring Service*.

The agreement signed in Belgrade on 14 March is remarkable for the “new” state it creates and also in that it ultimately resolves so little of the root differences between Montenegro and Serbia. It effectively recognizes the status quo. The “Proceeding Points for the Restructuring of Relations between Serbia and Montenegro” ends the “Yugoslav” fiction of Milošević’s FRY and establishes a new state to be called “Serbia and Montenegro.” This “truly original solution” (in Koštunica’s words)⁷⁷ reconstructs FRY as a very loose union of highly autonomous republics linked through a single president, a unicameral parliament, a council of ministers, and a Court of Serbia and Montenegro. According to the document, the state’s president will be elected by the Parliament of Serbia and Montenegro, which will “provide positive discrimination for Montenegrin representatives.”⁷⁸ The president’s role will be limited and the council of ministers will consist of just five departments including foreign affairs, defense, international economic relations, internal economic relations and protection of human and minority rights. Serbia and Montenegro are to have a joint army under a Supreme Defense Council, composed of the presidents of Montenegro, Serbia, and “Serbia and Montenegro,” and the Supreme Defense Council will take decisions by consensus. What will most notably not be common between the two republics is the economic sphere. Though the member states will be obliged to allow the free flow of people, goods, services, and capital, they are also responsible for establishing their own customs regimes.⁷⁹ Additionally, Montenegro will retain the Euro, while Serbia will continue to use the Dinar. Thus, Serbia and Montenegro, though nominally

⁷⁷. Vojislav Koštunica in “Yugoslav President Says Agreement ‘Basis for Future Constitutional Document’,” in Radio Belgrade 0900 GMT. 14 March 2002, trans. in *BBC Monitoring Service*.

⁷⁸. “Proceeding Points for the Restructuring of Relations between Serbia and Montenegro”, available through http://www.mfa.gov.yu/Sporazum/sporazum_e.html.

⁷⁹. While the agreement does observe that member states’ trade and customs policies should in principle move toward harmonization, it does not stipulate that they must. Given the dramatically different nature of their economies, it seems unlikely that industrialized Serbia would ever adopt the minimal tariffs insisted upon by Montenegro.

one country, will not enjoy a proper common market or a common currency. The agreement envisions a constitutional commission that will submit a Constitutional Charter to the various parliaments before the end of June 2002, after which elections and appointments for the joint state's posts and bodies will take place.

The agreement, contingent upon approval by member state parliaments and the federal parliament, is also notable for the lurking distrust that is evident in its many provisions.⁸⁰ The fact that Montenegro secured an effective veto, through the Supreme Defense Council, over the deployment of the common army should be considered a success. (Podgorica has long viewed the VJ not as a defender of Montenegro but rather as a threat.) Additionally, the agreement stipulates that the EU monitor the economic functioning of the member states and even act as an arbitrator should one member state believe that the other is shirking its responsibilities toward the free flow of commerce. An awkward principle of rotation is meant to ensure parity of representation between the two member republics in international organizations such as the UN, OSCE, and the Council of Europe. The document asserts that "In the Ministry of Foreign Affairs and the Ministry of Defense, the minister and his/her deputy from different member states shall take turns when one half of the term in office expires."⁸¹ Thus, rotation will apply to domestic portfolios as well.

What is perhaps most remarkable about the 14 March document is the very uncertainty built into the new state. The agreement includes a "Provision on Reconsideration" which stipulates that "Upon the expiration of a three-year period, the member states shall be entitled to institute proceedings for a change of state status, that is, *withdrawal from the state union* [my italics]."⁸² So likely

⁸⁰. The parliaments of Montenegro and Serbia approved the new arrangements on April 2002.

⁸¹. "Proceeding Points for the Restructuring of Relations between Serbia and Montenegro", available through http://www.mfa.gov.yu/Sporazum/sporazum_e.html

⁸². "Proceeding Points for the Restructuring of Relations between Serbia and Montenegro", available through http://www.mfa.gov.yu/Sporazum/sporazum_e.html

did the possibility of withdrawal by a member state seem to the agreement's authors that they included a provision recognizing Serbia as the successor to FRY in regards to international documents related to Yugoslavia, especially UN Security Council Resolution 1244.⁸³

Though it is likely to be approved by both republics' and the FRY parliaments, in fact the 14 March document is hardly satisfying. Neither federalists nor separatists can claim proper victory in this settlement, which effectively defers a final decision on Montenegro's status. Indeed, the Provision on Renegotiation could conceivably provide incentive for separatists to sabotage the new arrangements. With two distinct currencies and customs regimes, it is difficult to imagine how the state could hope to move toward a proper common market. Additionally, the rotation principle in ministerial posts and international organizations may well prove inoperable. At the very least, it is bound to undermine the effectiveness of those institutions it governs. Montenegro's secure of an effective veto over the deployment of the common army, however, should be considered an unqualified success. If Montenegro is able to exercise effective influence in FRY bodies, the deal will have somewhat expanded Montenegrin sovereignty in that Montenegrin representatives will have access to the resources of a much larger state. In essence, however, this deal effectively recognizes the status quo of two highly autonomous republics in a union that at times seems more nominal than real.

Reaction to the agreement has been mixed and it is notable that dissatisfaction has been expressed at the FRY, Serbian, and Montenegrin levels. At the federal level, Mladjan Dinkić, the Governor of Yugoslavia's National Bank, pessimistically claimed that the agreement did not resolve matters but in fact created new areas of contention between the member states. Referring to Koštunica's characterization of the deal as "original", he stated, "The solution is

⁸³. UN Security Council Resolution 1244 recognizes Kosovo as part of FRY but not necessarily Serbia.

indeed original because with no common monetary or tariff system there can be no state.” To Dinkić’s mind, the only winner from the agreement was Javier Solana.⁸⁴ Even Yugoslav Deputy Prime Minister Miroljub Labus, a signatory to the agreement, announced that he was “not happy” with it and only signed in order to assure Belgrade’s future progress toward European integration.⁸⁵

In Serbia, Serbian Justice Minister and head of the Christian Democratic Party of Serbia (DHSS) Vladan Batić announced that his party would not support the new arrangements, which could not last anyway. Batić, who had earlier called for a referendum on independence in Serbia stated, “It’s high time that we [Serbs] came to our senses and at the start of the third millennium created our own, independent, respected, democratic, European, integrated and credible state.” Calling Serbia the greatest loser of the joint-state accord, Batić bizarrely continued, “We have been turned into European Kurds of sorts,” and vowed to persevere with his referendum efforts.⁸⁶ The DSS and the DS unsurprisingly endorsed the agreement, while the spokesman for Milošević’s Socialist Party of Serbia called 14 March “the most shameful day in the history of the Serbian nation.”⁸⁷ Serbian Prime Minister Djindić remarked that the deal recognized the status quo.⁸⁸ Meanwhile Vojvodina’s politicians had mixed reactions to the accord, with some calling on Serbia (to which Vojvodina nominally belongs) to now reassess its own internal make-up and provide greater autonomy for Vojvodina.

⁸⁴. Mladjan Dinkic in “Dinkic Warns of New Federal Conflicts.” www.b92.net. (15 March 2002), available through www.b92.net.

⁸⁵. Miroljub Labus in “Yugoslav Official Only Accepted Federal Accord for Purposes of EU Integration.” BBC Monitoring Service. FoNet News Agency, Belgrade. 1106 GMT. 14 March 2002, available through Lexis-Nexis.

⁸⁶. Vladan Batic in “Party Leader Batic Says Serbia Has “Lost the Most” from Accord.” BBC Monitoring Service. Beta News Agency, Belgrade. 14 March 2002, available through Lexis-Nexis.

⁸⁷. Branko Ružic in “Serbian, Vojvodinian Politicians Divided on New State Union.” BBC Monitoring Service. Beta News Agency, Belgrade. 14 March 2002, available through Lexis-Nexis.

⁸⁸. “Agreement Recognizes Real Life, Says Djindic.” 14 March 2002., available through www.b92.net.

In Montenegro, debate over the new arrangements has been predictably explosive. As previously observed, the DPS's coalition partners maintain far more strident separatist positions than that party. Indeed, the LSCG has predicated its participation in government on the holding of an independence referendum. At this writing, President Djukanović and Prime Minister Vujanović are facing a full-scale revolt by their coalition partners which they are attempting to quell in part by highlighting the impermanence of the new arrangements. The main committee of DPS voted unanimously to support the new union. The SDP, however, issued a statement on 15 March that it would quit the Montenegrin government if the parliament ratified the new union with Serbia. On 19 March, the LSCG also announced that it could no longer support the government.⁸⁹ Liberal leader Miodrag Živković has since called upon Djukanović and Vujanović to resign. By contrast, representatives of the Together for Yugoslavia Coalition (which may soon need to change its name) have predictably indicated that the coalition will endorse the new state.

Djukanović has attempted to mollify his coalition partners by emphasizing the temporary nature of the new state. "This is a transitional arrangement on the way to full independence of both Montenegro and Serbia" he said. In an attempt to demonstrate DPS fidelity to eventual independence, party official Miodrag Vuković announced that party leaders could easily agree to schedule a referendum in March 2005, shortly after the Period of Reconsideration.⁹⁰ At this writing, new parliamentary elections have been called in Montenegro for October 2002 for which the DPS and SDP will submit joint lists. Djukanović's dilemma over independence has long been acute and a solution to the current crisis seems elusive at best. As Miodrag Živković observed in the initial aftermath of the 14 March agreement, "It is important to know one thing and it is that

⁸⁹. "Montenegrin Minority Government Loses Crucial Support." 19 March 2002, available through www.b92.net.

Mr. Djukanović has no good possibilities. All the possibilities are objectively bad and he's in a situation [where he must] choose the least terrible.”⁹¹

Conclusion

The Montenegrin constitution's preamble begins by invoking the “historical right of the Montenegrin people to have its own state, acquired through a centuries long struggle for freedom.”⁹² With the collapse of the equitable federation guaranteed by the FRY constitution and which was a Montenegrin requirement for participation in a joint state, this legally codified “historical right” has reasserted itself. However, a poll conducted from 12 January to 20 January 2002 in 12 municipalities by the Center for Democracy and Human Rights (CEDEM) confirmed Montenegro's division over independence. According to the poll, 46.7% of Montenegrins favored independence at the time while 41.9% opposed it, and 5.5% would abstain from voting in a referendum. (Some 5.9% remained undecided). Milo Djukanović emerged as Montenegro's highest rated politician, followed by Filip Vujanović and Svetozar Marović (all DPS). Nevertheless, the poll found that the “Together for Yugoslavia” coalition, with 36.8% of votes, would defeat the Victory for Montenegro coalition, at 33.3%, in parliamentary elections.⁹³ These results demonstrate a slight erosion of support for independence from CEDEM's January 2001 survey of Montenegrin opinion. Thus, a majority in Montenegro favors independence, but the country is closely divided over the issue. Furthermore, opposition to separation from the joint state often follows ethnic or regional lines, suggesting

⁹⁰. “Vukovic Announces referendum for March of 2005, Simonovic Says that It Should Not Be Even Thought About” *Vijesti* (Podgorica). 25 March 2002, available through www.mnnews.net.

⁹¹. Miodrag Zivkovic in “Condition Set by Liberals an Absurdity that Reduces Chances for Reaching Agreement.” *Vijesti* (Podgorica). 27 March 2002, available through www.mnnews.net.

⁹². Constitution of the Republic of Montenegro (1992), available through www.medioclub.cg.yu. Preamble.

that the territorial integrity of an independent Montenegro would not necessarily be guaranteed. Montenegro's politicians are in the unenviable position of having to disappoint nearly half of its population no matter which choice (continued union or full independence) they take.

Montenegro's leaders have been bold in their assertion of sovereignty and repatriation of authority to Podgorica. However, the question of independence will be more difficult for the coastal republic to resolve and will ultimately depend heavily on issues of identity. Montenegro long ago secured de facto autonomy from Belgrade, but does a majority in this country desire proper independence? Upcoming parliamentary elections (caused by the collapse of the ruling coalition in the wake of the EU brokered agreement with Belgrade) may provide an answer to that question. Yet while Djukanović and his allies remain popular at this writing, it is uncertain whether the Montenegrin electorate will return a pro-independence coalition to power. That said, it is difficult to imagine Montenegro surrendering its de facto independence. John Lampe has given his history of Yugoslavia the title *Twice there Was a Country* and Sabrina Ramet is currently writing her book, *The Three Yugoslavias*. Ultimately the accord establishing Serbia and Montenegro has not resulted in an attempt at a "fourth" Yugoslavia. Rather Serbia and Montenegro, their historic rights as states explicitly acknowledged in the founding accord, have agreed to a loose union of highly autonomous states that appears very temporary in nature. They have shown that behind the fiction of Milosevic's FRY lay the obvious truth that Yugoslavia became an anachronism over a decade ago.⁹⁴

⁹³. "Confirmation of Ideological Divisions" in *Publika* (Podgorica). 24 January 2002. Available through www.mnnews.net.

⁹⁴. Yugoslav President, Serbian nationalist, and sometime democrat recognized this himself in March 2002 when he stated that Yugoslavia and Yugoslavism "does not exist without all its constituent peoples with whom Yugoslavia was born in 1918." -- Vojislav Koštunica in "Koštunica Threatens Resignation if Federal Agreement Falters." 18 March 2002, available through www.b92.net.

THE USES AND ABUSES OF SOVEREIGNTY
(A CONCLUSION)

Sabrina P. Ramet

Legitimate Edgar, I must have your land:
Our father's love is to the bastard Edmund
As to th' legitimate: fine word, -- legitimate!
Well, my legitimate, if this letter speed,
And my invention thrive, Edmund the base
Shall top th' legitimate. I grow; I prosper: --
Now, gods, stand up for bastards!

■ Wm. Shakespeare, *King Lear*, I, ii

I

The term ‘sovereignty’ has seen a plenitude of uses, and abuses, in the roughly half a millennium since Jean Bodin (1529/30—96), the renowned French legal philosopher, launched the ‘modern’ theory of sovereignty into political orbit. Since then, the attribution of sovereignty has been used to vindicate state repression, to delegitimize external ‘interference’, to identify a state as qualified to enter into treaties and other international contracts, and to accord recognition, variously, of power, democratic validation, or ‘legitimacy’ (however defined). The term ‘sovereignty’ started out as a normative term – in Bodin’s rendering, referring to the authority exercised by monarchs within the limits set by Natural Law and Divine Law – and has never entirely shed its normative baggage. But as applied to actors on the international stage, there are differences between referring to a clearly legitimate state or head of state as ‘sovereign’ and referring to a despotic state or head of state in the same way. Or, to put it more concretely, describing Norway or Sweden, or the British parliament or the German *Bundestag* as ‘sovereign’ will probably not sound the same to most

ears as referring to North Korea or Iraq, or Saddam Hussein or the Russian Council of 21, as ‘sovereign’. That the ‘legitimate sons’ of politics should be seen as ‘sovereign’ scarcely seems problematic. But what about the ‘bastards’ of world politics?

The whole question of sovereignty gets even murkier when power is divided or shared with international authorities or subject to challenge by an unfriendly paternalistic neighbor – the situations of Bosnia-Herzegovina, Kosovo and Palestine, respectively – while anyone who would refer to Kurdistan, let us say, as ‘sovereign’, could only be thought to be speaking purely normatively, since the Kurds enjoy neither self-government nor diplomatic recognition. But is it possible (or desirable) to use the term ‘sovereignty’ in a purely empirical way?

II

W. J. Rees has outlined six alternative uses of the term ‘sovereign’, noting its use to refer to: (1) supreme legal authority, whether moral or not (e.g., Lord Lindsay); (2) supreme legal authority understood as enjoying moral authority (e.g., Rousseau and the Hegelians); (3) supreme coercive power by a fixed number of persons (the way in which the term is used by the neo-realists); (4) supreme coercive power exercised by the community as a whole (an understanding which could be compatible with certain anarchist notions); (5) the most potent political influence (e.g., Dicey); and (6) permanently supreme authority, emphasizing its immanence over time (e.g., Harold Laski).¹ As if that were not enough, one also has to reckon with attributions of sovereignty variously to the state or head of state, to a national group (e.g., Serbs or Albanians), or to a country (as in the phrase, ‘Serbia is a sovereign country’). Little wonder, then, that Richard Foulke, in his 1920 treatise, threw up his hands

in despair, declaiming, “The word sovereignty is ambiguous....We propose to waste no time in chasing shadows, and will therefore discard the word entirely. The word ‘independence’ sufficiently indicates every idea embraced in the use of sovereignty necessary to be known in the study of international law.”²

But the term has survived – among other reasons, because ‘sovereignty’ usually means something more than mere independence. Slovenia, Croatia, and Bosnia-Herzegovina all declared themselves ‘sovereign’ months before declaring their ‘disassociation’ from the defunct Socialist Federated Republic of Yugoslavia. ‘Sovereignty’, thus, seems to be used often to mean *entitled to independence*. Indeed, the theory of popular sovereignty, which is typically understood as entailing *national* sovereignty, is inherently normative in the sense that it locates the right of state-building in the people or nation. The ‘Declaration of the Rights of Man and the Citizen’, adopted by the eighteenth-century French revolutionaries, held, in this spirit, that “the principle of all sovereignty resides essentially in the nation; nobody, no individual, can exercise any authority which does not emanate expressly from it.”³ And it is this entitlement-driven notion of sovereignty which has been dominant among Serbs, Croats, Slovenes, Albanians of Kosovo, and Montenegrins, rather than the notion of authority limited by moral law, associated with Bodin,⁴ the Hobb’sian

¹ . W. J. Rees, “The Theory of Sovereignty Restated”, in *Mind*, Vol. 59, Issue 236 (October 1950), pp. 495—500. See also the discussion in John Hoffman, *Sovereignty* (Minneapolis: University of Minnesota Press, 1998).

² . Roland R. Foulke, *A Treatise on International Law* (Philadelphia: Winston Co., 1920), p. 69, as quoted in Hymen Ezra Cohen, *Recent Theories of Sovereignty* (Chicago: University of Chicago Press, 1937), p. 82.

³ . Quoted in Cohen, *Recent Theories*, p. 10.

⁴ . Jean Bodin: “The absolute power of princes and sovereign lords does not extend to the laws of God and of nature. He who best understood the meaning of absolute power, and made kings and emperors submit to his will, defined his sovereignty as a power to override positive law; he did not claim power to set aside divine and natural law.” -- J. Bodin, *Six Books of the Commonwealth*, trans. & abridged by M. J. Tooley (Oxford: Basil Blackwell, 1955), posted at www.constitution.org/bodin/bodin_.htm [accessed 9 August 2002] – Book I, chap. Viii (‘Concerning sovereignty’), p. 16.

equation of sovereignty with the ability to assure security,⁵ Hans Morgenthau's matter-of-fact view of sovereignty in terms of legislative and executive competence,⁶ or John Ruggie's juridical understanding.⁷ Alfredo Verdross's emphasis on the character of sovereignty as a state's legal status under international law gets at part of what the Albanians of Kosovo and the Montenegrins mean in claiming 'sovereignty'.⁸ But it misses the mark when it comes to capturing the pleas of Milošević's apologists, in 1999, that NATO refrain from attacking a 'sovereign state'. For the apologists, sovereignty was vested in the state apparatus which Milošević dominated – which is to say, in practice, in Milošević, and Milošević's will was seen as equivalent to that of the entire Serbian people. In 1990, in a highly intelligent article, W. Michael Reisman wrote that "...the international legal system in which declamations such as 'l'état, c'est moi' were coherent has long since been consigned to history's scrap heap. In our era, such pronouncements become, at least for audiences at a safe

⁵ . Thomas Hobbes: "All the duties of sovereigns are implicit in this one phrase: *the safety of the people is the supreme law*. For...those who hold sovereign power among men cannot be subject to laws properly so called, i.e. to the will of men, because sovereignty and subjection to others are contradictory." -- T. Hobbes, *On the citizen*, trans. & ed. by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), p. 143. See also George Shelton, *Morality and Sovereignty in the Philosophy of Hobbes* (New York: St. Martin's Press, 1992), chap. 14 ('The Nature of Sovereignty'); and James R. Hurtgen, "Hobbes's Theory of Sovereignty in *Leviathan*", in *Reason Papers*, No. 5 (Winter 1979).

⁶ . Hans Morgenthau identifies sovereignty with "a centralized power that exercise[s] its lawmaking and law-enforcing authority within a certain territory." -- Quoted in Thomas J. Biersteker and Cynthia Weber, "The social construction of state sovereignty", in T. J. Biersteker and C. Weber (eds.), *State sovereignty as social construct* (Cambridge: Cambridge University Press, 1996), p. 4.

⁷ . John Ruggie defines sovereignty as "the institutionalization of public authority within mutually exclusive jurisdictional domains." -- J. Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis", in Robert O. Keohane (ed.), *Neorealism and Its Critics* (New York: Columbia University Press, 1986), p. 143, as quoted in J. Samuel Barkin and Bruce Cronin, "The state and the nation: changing norms and the rules of sovereignty in international relations", in *International Organization*, Vol. 48, No. 1 (Winter 1994), p. 107.

⁸ . Alfredo Verdross, as paraphrased by H. E. Cohen: "Sovereignty refers to being directly subordinate to international law. Only states are directly subordinate to international law. Only states are directly subordinate to international law; therefore, only *their* competence comes from it directly and only then are they entitled to be called 'sovereign'." -- Cohen, *Recent Theories*, p. 81, my emphasis.

remove, the stuff of refined comedy.”⁹ The fact that non-Serb apologists for Milošević could equate the despot with the Serbian nation, giving him the status of a latter-day Sun King, reminds us that vapid polemics may conceal unintended comedy. But when the appeal to sovereignty is intended to safeguard a regime’s ability to perpetrate atrocities against its own population, we may say that the concept of sovereignty has been seriously abused.

III

Those who, like Foulke or, for that matter, Harold Laski,¹⁰ would have us abandon the concept of sovereignty are not likely to prevail. The power of the concept is revealed in its ability to provide entitlement to both communities already enjoying independence and those merely aspiring to that status, to describe simultaneously the actual competence of existing legal institutions and their purported authority (which is to say, their entitlement to carry out their functions), and to attribute right to the wielders of power, whether on the basis of their legitimacy (itself another slippery concept) or on the basis of their power alone. The concept can be defined and used scientifically, but part of its appeal lies in the very uncertainty which arises from the plenitude of definitions and uses, giving the concept a somewhat mystical or even magical quality. But for all that, it should be clear that these sundry uses of the term all refer, in one way or another, to right – both in the sense of entitlement and in the sense of establishing ‘what is right’. And right, in turn, is the fundamental building block of power.

⁹ . W. Michael Reisman, “Sovereignty and Human Rights in Contemporary International Law”, in *American Journal of International Law*, Vol. 84, Issue 4 (October 1990), p. 870.

¹⁰ . Harold Laski: “...it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered [on the grounds that] it is at least probable that it has dangerous moral consequences [and] is of dubious correctness in fact.” -- H. Laski, *The Grammar of Politics* (1941), as quoted in F. H. Hinsley, *Sovereignty*, 2nd ed. (Cambridge: Cambridge University Press, 1986), p. 216.

Previous issues of TSEECs

- No. 1 Michael David-Fox, *Masquerade: Sources, Resistance and Early Soviet Political Culture*. May 1999
- No. 2 Gábor Klaniczay, *The Annales and Medieval Studies in Hungary*. August 2000
- No. 3 Mark B. Adams, *Networks in Action: The Khrushchev Era, the Cold War, and the Transformation of Soviet Science*. October 2000
- No. 4 Frode Overland Andersen, *Fragile Democracies: A Study of Institutional Consolidation in Six Eastern and Central European Democracies 1989-1997*. November 2000. ISBN 82-995792-0-1
- No. 5 Jon Raundalen, *Indianeren som westernhelt. En studie av den østtyske westernfilmen (The Indian as a Western Hero. A Study of the East German Western-films)*. In Norwegian, with an English Summary of 11 pages. February 2001. ISBN 82-995972-2-8
- Nr. 6 György Péteri, ed., *Intellectual Life and the First Crisis of State Socialism in East Central Europe, 1953-1956*. November 2001. ISBN 82-995792-3-6
- Nr. 7 Victoria de Grazia, *American Supermarkets versus European Small Shops. Or how transnational capitalism crossed paths with moral economy in Italy during the 1960s*. ("Approaches to Globality" sub-series). March 2002.
- Nr. 8 Catriona Kelly, "The Little Citizens of a Big Country": *Childhood and International Relations in the Soviet Union* ("Approaches to Globality" sub-series). March 2002
- Nr. 9 Scott M. Eddie & Christa Kouschil, *The Ethnopolitics of Land Ownership in Prussian Poland, 1886-1918: The land purchases of the Aussiedlungskommissionen*. May 2002.
- Nr. 10 Knut Andreas Grimstad, *The Globalization of Biography. On Multilocation in the Transatlantic Writings of Witold Gombrowicz, 1939-1969* ("Approaches to Globality" sub-series). June 2002.

ISSN 1501-6684