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THE DICTATORSHIP OF THE PROTECTARIATE UNDER
CIVICIST SELF-MANAGEMENT**

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On March 27, 2002, the Office of the High Representative (OHR) in Bosnia congratulated the leaders of “the political parties” in Bosnia on an agreement that they had signed that day to reform the constitutions of the “entities” – the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (B&H).

The High Representative did not note that the most influential and popular political parties among the Bosnian Croats (HDZ) and Bosniaks (SDA) did not sign the agreement, or that the four Serb political parties that signed it did so with reservations on some of the main provisions. In fact, the versions of both the Agreement and annexed note expressing reservations did not list the signatories, perhaps because doing so would have shown that the supposed Agreement was not accepted by the most popularly-supported political parties.ⁱ

The intent of the Agreement is to implement a decision of the Constitutional Court of Bosnia and Herzegovina, which was made by two Bosniak and three foreign judges over the objections of the two Serb and two Croat judges. Thus, the lack of agreement to the supposed Agreement was in keeping with its task, which was to impose on the Croats and Serbs a polity that most of them reject but that the “international community” supports – a Bosnian state with real governmental power over them.

What is striking at this point is not only that the basic stalemate of Bosnian politics remains almost exactly what it was in 1992, but that the political mechanisms proposed to solve it are essentially the same as those that were shown to be unworkable in the former Yugoslav federation. The same mechanisms were also at work in the very brief life of Bosnia and Herzegovina after the elections of 1990 brought freely elected, non-communist political parties into power. If second marriages manifest the triumph of hope over experience, the latest constitutional “Agreement” in Bosnia manifests the triumph of the wishful thinking of the OHR and the politburo to which the HR reports – the PIC Steering Board, which welcomed the Agreement with “satisfaction.”ⁱⁱ

Bosnia 1990-92: Political Partition, Constitutional Deadlock and War

The basic political stalemate of Bosnia was manifested in the constitutional changes enacted by the last communist parliament of the Socialist Republic of Bosnia and Herzegovina, and in the results of the first free and fair elections there in almost seventy years, in late 1990. The political problem was that the population of the B&H was internally divided into Muslims, Serbs, Croats, and “Yugoslavs and others,” each forming a “nation” in the political sense. In an attempt to reflect this situation, the constitution of socialist Bosnia provided for proportional representation of officials from the national groups at all levels of government. This system was further elaborated in constitutional amendments adopted in July 1990, in anticipation of the first freely contested elections since the end of communism. These amendments also required that legislation contested as violating the equality of the nations of B&H could be adopted only by a special two-thirds majority. This requirement was enforced even after the legislation in question gained the required unanimous consent of a special Council for the Establishment of Equality of the Nations and Nationalities of B&H.

The 1990 elections then followed the course of every relatively free, relatively fair election ever held in Bosnia (1910, three in the 1920s, two in the 1930s, and in 1996) by looking remarkably like an ethnic census: Muslims voting overwhelmingly for one Muslim party, Serbs voting overwhelmingly for one Serb party, and Croats voting overwhelmingly for one Croat party. A measurable portion of the 1990 electorate did in fact vote for a civil society of equal citizens: 5.6 percent.

The resulting government elected in 1990, not surprisingly, never functioned. A division of offices at the highest levels led to mutual accusations of misuse of office. The parliament and the multiple member Presidency, which had to have proportional representation of the national groups, deadlocked. Matters came to a head in October 1991, when a resolution calling for the *de facto* secession of Bosnia from the crumbling Yugoslav federation was backed by Muslims and Croats, but opposed by Serbs. While the Serb representatives tried to invoke the Council for the Establishment of Equality that was mandated by the 1990 constitutional amendments, Muslims and Croat members of parliament took advantage of a recess that had been proclaimed by the President of the Parliament (a Serb, in the same deal that made Alija Izetbegovic President of the Presidency) to pass the challenged law in the absence of all Serb representatives. Not surprisingly, Serb political participation in Bosnian governing bodies then ceased. Since the challenged resolution itself stated that “any possibility of outvoting in the process of decision making on crucial issues concerning the equality of all nations and nationalities ... will be precluded” by an appropriate parliamentary mechanism, the 1990 efforts to ensure that a nation’s rights would not be violated, not only did not work, but could not work.

The March 1992 “referendum” on independence – opposed by the Serb political representatives and challenged as threatening the equality of Bosnia’s Serbs – also looked like an ethnic census: Serbs did not vote, Muslims favored and voted for it, and most

Croats opposed independence but voted for it, making it easier to secede from Bosnia thereafter.

Consequently, 1990-92 transformed the political division of the Bosnian population that had existed at least since the end of the Ottoman rule into a political partition in which the majorities of each group believed their interests to be so opposed to those of the other groups that coexistence was not possible. The constitutional mechanisms devised to force consensus instead turned into devices for producing deadlock, followed by the classic continuation of politics by other means.

Wishful Thinking and Negative Sovereignty

The international response to Bosnia's political breakdown was an exercise in wishful thinking: it was hoped that if Bosnia was recognized as an independent state, the political parties that wanted to partition it would be thwarted. As U.S. Ambassador to Yugoslavia Warren Zimmerman said a couple of years later, "we were wrong" in that assumption, and recognition failed to force the Bosnian Serbs and Herzegovinian Croatsⁱⁱⁱ to accept the putative Bosnian state. The recognition of Bosnia was an exercise in negative sovereignty, an attempt to create a state not because a majority of its putative citizens wanted it, but rather, because a very large portion of them did not.

Negotiations through Dayton: Constituting Deadlock

The constitutional proposals that were made by international mediators after the 1992 war began failed for a simple reason. As Vance and Owen pointed out as early as 1993, one of the three national groups wanted a centralized state, but the others rejected this on the grounds that it would not protect their interests. The mediators then proposed a decentralized "state" with no army or any real governmental power over its own territory, with governmental power resting in local governments that would, in practice, be dominated by single national groups. The 1994 Washington Agreement created such a system for territories dominated by Croats and Muslims, in which the control of political parties elected by each group would have complete governmental power and even separate military forces. This "Federation" never actually functioned since its constitution called for unanimity, and thus, no substantive decisions were ever reached.

The 1995 Dayton agreements supplemented the Croat-Muslim Federation with the Republika Srpska, a state structure (if denied official statehood) of, by, and for, Serbs. In the end, the Bosnian Serbs and Herzegovinian Croats went along with Dayton because it made Bosnia a mirage – a common market with a foreign office and with no real governmental authority within its own territory – leaving Serbs sovereign in the RS, Croats sovereign in parts of the Federation, and Muslims sovereign in the rest of the Federation, while recognizing the separate military forces of each national group. An elected parliament of Bosnia and Herzegovina (as opposed to the Entities) had almost no jurisdiction and could not even act on the little it had, since it could be blocked easily by

bloc voting of the representatives of any of the constituent peoples. Constitutionally, the Federation was defined as the entity of the Bosniaks and Croats, with the RS as that of Serbs – the formulation that Croats and Serbs accepted and also the one that fit best with traditional central European definitions of the nation-state.

Bosnia 1996-2001: The Protectorate and the Viceroy

Since the representatives elected by Bosnia's peoples ensured that the supposed Bosnian state could not function, the Peace Implementation Council's politburo turned the High Representative (HR) into an official comparable to the former Viceroys of Britain's Indian Empire. The High Representative was charged with doing whatever he thought necessary to impose upon the peoples of Bosnia the state that so many of them rejected. This the HR did, imposing legislation when the elected parliament refused to enact it, and otherwise ruling by decree – including decrees that removed elected officials from office on the grounds that their policies were not politically correct.

For present purposes, what is interesting is the constitutional engineering entered into by the OHR. Dayton had in essence ratified the partition of Bosnia – an act that the dominant Serb and Croat parties had pledged as their election platforms in 1990 (and 1996) and for which people had voted, and which was also the whole point of the war. The distribution of peoples after the war was over and the Dayton Agreement came into effect reflected this partition. According to figures cited by the Constitutional Court of B&H, in the RS the percentage of Serbs rose from 54.3 percent in 1991 to 96.79 percent in 1997, while in the Federation the percentage of Serbs dropped from 17.62 percent in 1991 to 2.32 percent in 1997. Other figures show that within the Federation, the separation of Croats from Bosniaks was also nearly total.

In an ingenuous effort to remove legitimacy from this political partition, Bosniak politicians brought a suit to the Constitutional Court of B&H, alleging that the entity constitutions violated the provisions for equality in the Constitution of B&H by defining the entities in ethno-national terms – the RS as a Serb entity, and the Federation as a Muslim and Croat entity. Since the entire structure of the Dayton Constitution for Bosnia also reflected these definitions, the case essentially alleged that the basic structure of the Bosnian constitution was unconstitutional – a first, one suspects, in world constitutional theory. In 2001, the three foreign judges of the Constitutional Court of B&H joined the two Bosniak ones in agreeing to this novel position, outvoting the two Serb and two Croat judges, all of whom dissented. OHR then demanded that the entity constitutions be rewritten to bring them into line with this decision.

Thus by 2002, Bosnia and the entities were proclaimed to be based on civic principles rather than ethnic ones, even though there was no evidence available to indicate that the majority of Serbs or Croats accepted this definition. On the contrary, there was rather a lot of evidence – starting with voting patterns – indicating that they did not accept this viewpoint. We may, thus, see Bosnia as a Protectorate, run by OHR,

which might be called the Protectariate – with the dictatorship of the Protectariate being as effective as that of the proletariat had been, and just as popular.

Civicist Self-Management

What is fascinating is that the constitutional mechanisms devised by the protectariate to deal with the national divisions within Bosnia are essentially the same ones that had been employed by the League of Communists of Yugoslavia (LCY). The “vital interests” of constituent peoples (Bosniaks, Serbs and Croats) are to be protected in each entity by constitutional mechanisms designed to allow minorities to block passage of laws to which they object. Representation of each constituent people is required in all government organs in each entity, despite the absence of Serbs from the Federation or non-Serbs from the RS. The provisions for the two entities differ in some respects, and the Croats are the big losers since they go from being equal actors in a binational Federation to being one of three constituent groups in the Federation. Prospects for the RS to remain a Serbian entity would seem to be great.

The chances that the new constitutional systems will work are slim. After all, the Yugoslav federation failed constitutionally because each republic could block legislation and other federal functions. The short life of Bosnia under the freely elected government in 1990 also failed because the 1990 constitutional amendments permitted a constituent people to block decision-making. Overriding such a blockade showed very clearly that in fact, a constituent people could be turned into a minority, with very dim prospects for the future of its members.

The conundrum is this: members of each community believe that they need protection from the members of the other communities, and thus demand veto powers. Veto powers, however, are means to block action, not achieve consensus. Consequently, after ten years, Bosnia is right back where it started: a political deadlock that is ignored by the non-elected politicians who run the place, who simultaneously proclaim themselves to be acting according to the highest principles of democracy and morality. Indeed, on the same day that the constitutional “Agreement” was proclaimed – despite a general lack of agreement on it – the OHR also announced a Decision on the Eligibility of Candidates to Run for Office. This decision not only bars from office politicians who have been “removed from office” by the HR for “obstructing the implementation of the Dayton Peace Agreement,” but also threatens to block official registration of political parties which do not cleanse their executive bodies of such people. The goal is “to ensure that the democratic procedures enshrined in domestic BiH legislation are not undermined.” For those of us who recall the days when the LCY rejected potential candidates for lacking “moral and political suitability,” the world does, indeed, seem to have turned full circle.

Back to The Future: 1991 as the End of History

After ten years of putative independence, Bosnia seems to be on the verge of returning to 1991. Indeed, the Dayton Agreement provides that quotas for political offices will be based on the 1991 census, even though (or maybe because) that census now bears almost no relationship to the distributions of peoples throughout Bosnia and Herzegovina. The constitutional and political structures also echo those of April 1991, with the dictatorship of the protectorate defending the gains of civicist self-management. Of course, the impossibility of civicism in one country is demonstrated by the international character of the protectorate.

Actually, most Bosnians probably would not mind returning to 1991 if they could. The only problem is that in fact, history does not end. The only way that Bosnia can remain in 1991 is if it continues to be a protectorate. As soon as the protectorate ends, Bosnia will revert to the present. After all, the history of ethnically mixed regions that were proclaimed states upon the departure of empires is pretty well known, and pretty gloomy. Bosnia, in 1992, simply enacted a partition-after-independence scenario played out earlier in places like Punjab, Cyprus, Sri Lanka, Anatolia, Armenia, and Azerbaijan. The only place that really experimented with multi-religious, multilingual, multiethnic democratic federalism is India, and that nationalist movement was homegrown, not imposed. It is also now under threat by majoritarian politics. The last major effort to stop time in order to cement proportions of political representation in a multiethnic state was Lebanon before 1976. As Bosnia returns to 1991, the logical next step is a return to 1992 and the war that began at that time, a date likely to arrive as soon as the end of the dictatorship of the protectorate permits the return of history.

ⁱ Calling such a non-agreed-to text an Agreement is a linguistic fraud comparable to calling the Rambouillet Accords, accords, but since it worked then it will probably work now.

ⁱⁱ Calling the PIC Steering Board a politburo is meant to emphasize the remarkable structural continuity between Bosnia under the rule of PIC and the SFRY under the rule of the LCY. In both cases, unelected administrators report to equally unelected political superiors, with all parties claiming legitimacy for their unappealable decisions by citing the highest principles of justice and freedom, while also disqualifying nationalist politicians and parties precisely because the latter are popular. OHR is thus a latter-day equivalent of SIV, with Wolfgang Petrisch equivalent to Branko Mikulic or Milka Planinc.

ⁱⁱⁱ There is substantial evidence that Bosnian Croats, as opposed to those of Herzegovina, were actually in favor of Bosnia, but for that very reason they were systematically excluded from political positions by the HDZ.