
On the Chances of Ethnocultural Justice in East Central Europe

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Introductory Remarks

In his insightful and bitter essay 'The Failure of the Elite', Milovan Danojlic says:

The defeat is complete. The winner is post-communism with a nationalist face. What we proposed turned out to be lukewarm, unconvincing, and abstract. We failed to offer anywhere near satisfactory answers to any of the painful questions raised by the break-up of Yugoslavia. 'Democracy solves everything' is what we kept repeating, and each time we were less and less convinced of what we were saying. How can you bring to democracy tribes that hate each other? How can you find harmony between the principle of the sovereignty of the new states and the duty to respect minorities? And who would, anyway, accept today the status of a minority? Only those who have no choice. (Milovan Danojlic, *Muka duhu (Trouble with the Soul)*, (Belgrade, 1996), 404.)

Milovan Danojlic is one of the very best Serbian writers of our time. He has not been engaged in politics. During the last decade he spent most of his time in Paris. Yet as an intellectual, he felt co-responsible for failing to offer anything beyond traditional liberal arguments.

Will Kymlicka, in summarizing those liberal arguments, points to their underlying premise that '... once democratic rights and institutions were effectively established and accessible to all citizens, people would stop mobilizing on the basis of ethnocultural affiliation.'¹ He cites another example of the traditional liberal argument: '... ethnocultural conflict was a substitute for modernization and economic well-being. On this view, the real problem was that some people felt left behind in the process of modernization, and once

a certain level of economic development was achieved and accessible to all citizens, people would stop mobilizing on the basis of ethnocultural affiliation.²² The chain of events in the former Yugoslavia has certainly not proved this contention. Admittedly it has not been refuted either, since the desired level of modernization and economic well-being—which could arguably stop mobilization on the basis of ethnic affiliation—has not been achieved, and is nowhere in sight.

Kymlicka's own view, however, is that, 'There is not a shred of evidence from Western democracies that the achievement of democracy, economic prosperity, and personal tolerance will lead to an abatement of ethnocultural mobilization.'²³ It is not likely that Yugoslavia, or the rest of East Central Europe (ECE) would provide the missing evidence. Even allowing for the benefit of the doubt, the events of the last ten years in Yugoslavia have shown the simple fact that without recognizing the importance of ethnocultural justice, and without basic arrangements that would assure some balance among ethnic aspirations, the process of modernization cannot start to unfold. The society might very well wish economic well-being but will remain unable to make purposeful and concerted efforts to achieve it. Whether modernization and economic well-being, on the one hand, and the decrease of ethnic tensions, on the other, are correlated remains questionable. Even if they were, the sequencing must be reversed, or maybe intertwined.

It is important to note that the 'democracy solves everything' slogan resonates better with majority aspirations. Believers in ethnocultural neutrality and group-neutral regulation—and who are proponents of a majority perspective—would usually stop at the 'one man, one vote' principle, asserting that liberal tenets only require us to make sure that 'one man' means any man (or at least any citizen) irrespective of his/her ethnic background, race, or religion. From a minority perspective, the requirements of fairness and equality confront us with additional issues. To mention a simple one, it is important to know in which language(s) electoral ballots will be printed. A more difficult question arises in societies which, to a greater or lesser extent, possess the characteristics of 'ethnic societies',²⁴ that is, environments where a history of unchecked ethnic rivalry often translates into an ethnic vote. In such circumstances, fairness and equality might require regulation which would yield adequate, or at least some, minority representation in spite of existing ethnic undercurrents.

Is Ethnocultural Justice a Novelty in ECE Countries?

The key question put before the contributors to this volume is whether new Western models of ethnocultural justice might assist post-Communist countries in finding a democratic approach to ethnic diversity. To better understand this issue one must probe a prior question: are concepts of ethnocultural justice, public recognition, and accommodation of diversity, novelties in ECE countries? My short answer to this latter question is a simple no. Various societies, states, and their successor states, as well as social thinkers in ECE countries whom one could label 'liberal' within the given social context, were well aware of the fact that ethnocultural neutrality cannot yield social justice and harmony. To mention just one author, Oszkár Jászi, a leading Hungarian sociologist prior to World War I—a time when Hungary was concerned with large groups of non-Hungarians within its borders rather than with large groups of Hungarians outside its borders—stresses: 'One can summarise a minimal program with the following words: people need good schools, good public administration, and a good judiciary. There is only one way towards good schools, good public administration and a good judiciary, which is more important than any technical or institutional perfection, and which can shortly and simply be defined the following way: we shall only have good schools, good public administration, and a good judiciary if people get these in their own language.'²⁵ This line of reasoning was not an isolated case.

Granted, thoughts of liberal sociologists in ECE countries or elsewhere have rarely been fully translated into political action and legal norms. But rulers, or even dictators, were aware of the fact that ethnocultural neutrality simply does not work in countries where national minorities make up a considerable segment of the population. Rulers may not have been guided by liberal ideas of social justice, but they were aware that the lack of group-sensitive attitudes and regulation could undermine stability. Assuring loyalty to the state is difficult. But it is practically impossible to expect loyalty to a common state and common cause from those whose cherished identity is excluded from common concepts. It is easier to envisage a country as my country if I can refer to it in my language, and if the cultures and languages of that country are reflected in the public domain. During centuries of Ottoman rule in the Balkans, Turkish invaders prudently avoided any temptation to impose one language and one religion.

Lenin spoke often in favour of maintaining diversity—although he opposed the idea of cultural autonomy. He argued that Russian should not be imposed as the only official language in Russia, or later in the Soviet Union. He viewed Switzerland's three official languages positively, noting that 70 per cent of the Swiss population was German, while in Russia only 43 per cent was Russian.⁶

Tito was also well aware that stability in a multicultural country—even under a one-party system—could only be achieved through constant attention to ethnic diversity and balance.⁷ Since Tito did not belong to the majority nation in Yugoslavia, for him the option of imposing the majority culture was hardly possible. He was therefore personally limited in his choices for accommodating ethnic and cultural rivalries, and creating a society that is capable of functioning in spite of these rivalries. The remaining option was the difficult task of forging a balance.

The point here is that the reverberations of 'liberal-pluralist' thinking will hardly represent a revelation in the Balkans and ECE countries. They simply confirm what was known in better periods of the history of these countries. And yet, the expansion and growing authority of 'liberal-pluralist' concepts in Western political thinking may have two highly important practical consequences in ECE countries.

First, at a time when the West and Western precepts are clearly regarded in ECE countries as models—and sometimes given more credit than they actually merit—classical liberal teaching that bespeaks ethnocultural neutrality might present a stepping-stone to majority aspirations and demagoguery; and liberal canons, whose perception of equality does not include the right to be different, might justify concepts that equate the majority with normalcy. Using Western-style discourse is a clear rhetorical advantage at a moment in history when practically all ECE countries are aiming at membership in the European Union and NATO and, consistent with this endeavour, are trying to appear as 'euroconforming' as possible. It is material, therefore, to appreciate which principles can be postulated as 'Western' and 'liberal'.

Second, while providing an authoritative justification for a return to the practical wisdom of seeking stability through ethnocultural justice, 'liberal-pluralist' concepts might also help in finding ways of implementing a policy of ethnocultural justice within the context of modern democracies. In Tito's Yugoslavia, in spite of many imperfections and the lack of genuine democracy, a viable accommodation of ethnic identities was achieved. I do not fully see the point of those

critics who say that in Yugoslavia the ethnic problem was just brushed under the carpet, not solved. The problem of ethnic differences can never be solved. It needs constant attention—and this applies to Serbs, Croats, Bosnians, Albanians, and Hungarians, just as it applies to ethnic groups in Spain, Belgium, Switzerland, Italy, Finland, and Canada. Tito's recipe for implementation was a blend of culture and party discipline—in some cases more culture, in other cases more party muscle. During the years of break-up, transition, and civil war, both ingredients have practically vanished. What is badly needed now is some guidance on how to achieve ethnocultural justice without traditional devices, and how to build a new culture without party discipline.

On Three Facets of Ethnocultural Justice

I submit that one can identify three facets of ethnocultural justice, albeit distinguished in different societies by their relative values, different tools for implementation, and different levels of recognition. The first facet requires some separate space for minorities. Ethnocultural justice clearly supposes a sphere or space where minorities can organize themselves, at least for cultural interaction. Communist regimes did not recognize the legitimacy of this facet because of their adherence to an inflated notion of public space. Minority demands for a self-reliant network of cultural organizations, or some other form of cultural autonomy, were greeted with the same suspicion as requests for autonomy of the university, or attempts to organize another political party.

The second facet concerns an equitable sharing of public space. On this account, some ECE countries did a much better job under Communism than they did with the first facet. For example, in the former Yugoslavia, within the large sphere of state activities and competencies, more languages were recognized as official, road signs and street names were multilingual, documents were issued and accepted in more than one language, and the state subsidized cultural institutions and media in both majority and minority languages.

The most difficult and most controversial facet of ethnocultural justice is the search for a counterweight which would neutralize ethnic undercurrents and biases, and which would prevent the transformation of the 'one man, one vote' principle into an ethnic monopoly of the majority over the minorities.

*Further Thoughts on Neutralizing Ethnic
Undercurrents and Biases*

I remember the incident—and the discomfort I felt—when I was a second year law student and a professor of constitutional law explained to us that ‘nations’ and ‘nationalities’ in Yugoslavia were entitled to adequate representation in state authorities. I asked him what ‘adequate’ was, and he responded that proportional representation is usually adequate, but it need not be so. My next question was, ‘By what means was this being implemented?’ This proved to be politically incorrect. I got an icy response. According to the professor, my query showed that I was lacking optimism and confidence, and although I may have had good intentions, I was in danger of falling under the influence of ‘reactionary objectivism’.

During the decades that followed, I never learned what ‘reactionary objectivism’ actually was, but I got a pretty good idea about what was wrong with my question. Having lived for decades in post-World War II Yugoslavia, I had ample opportunity to observe the concern for adequate ethnic representation in decision-making bodies at all levels. Being a lawyer, I also knew that this was not the consequence of legal rules. This was the ‘party line’. In the Autonomous Province of Vojvodina, it was unthinkable not to have Hungarians, Croats, Romanians, Slovaks, and Ruthenians—in addition to Serbs—in the Vojvodina Parliament, local assemblies, executive bodies, and committees of the Communist Party.

The Province of Vojvodina, which became part of Yugoslavia after World War I, has always had a most complex ethnic landscape. (Actually, I have to be careful with the word ‘always’. In Central and Eastern Europe—and probably elsewhere as well—national aspirations are sometimes based on events which took place many centuries or even a millennium ago, and I do not really know much about the ethnic structure of Vojvodina, let us say, 900 years ago. I am certain, however, that it has been a most diverse multiethnic region within at least the last 300 years.) Until recently, no ethnic group had an absolute majority in Vojvodina. The Serbs first passed this threshold in 1948, when they reached 50.42 per cent,⁸ compared with 26.13 per cent Hungarian and 8 per cent Croat. According to the latest (1991) census, the Autonomous Province of Vojvodina has 2,013,889 inhabitants, of which 56.8 per cent are Serbs (1,143,723) and 16.9 per cent are Hungarians (340,946). The third group is comprised of 168,859 Yugoslavs,⁹ or 8.6 per cent. Croats make up 3.7 per cent, Slovaks 3.1 per cent (63,545), and Romanians 1.9 per cent (38,809).¹⁰ Demo-

graphic statistics in Vojvodina also include Montenegrins, Gypsies (Roma), Ruthenians, Macedonians, Ukrainians, Moslems, Albanians, and Slovenians. Two minorities which used to play an important role in the economic and cultural life of Vojvodina but have, practically, disappeared since World War II are the Germans, the third largest group before the war, and the Jews.

To bring to life the atmosphere in Vojvodina, and in Yugoslavia, during the first decades after World War II, I will relate an event from my high school days. I remember the consternation when we elected the board of the swimming club in my home town and, as it turned out, all chosen board members were Serbs. The coach and some older members of the club—those who had some political experience—said that this outcome was unacceptable. Most of us, who were in our teens, did not really care about who was on the board. We felt that the outcome was somehow odd, but since we wanted to terminate the boring meeting in the shabby building, some of us argued that one should not interfere with democracy. The president of the club—a former swimmer and later a ‘socio-political worker’—explained, however, that democratic elections need not yield democratic results. (Forty years later, I heard almost the same words pronounced by Richard Holbrooke, who had a crucial role in the negotiations to end the war in Bosnia. Waiting for the first post-war election in Bosnia and being wary of its possible outcome, Holbrooke said in an interview to ITN News, ‘Democratic elections might bring an undemocratic result’.)¹¹ The president and coach then approached almost all non-Serbs—there were quite a few Hungarians on the team, one Romanian, and one Jew—and pressured us to become candidates to fill an additional position on the board. At the end of the day, we had a board which was not ethnically homogeneous.

In this case, the reason behind the self-styled affirmative action was not even the endeavour to offset possible ethnic bias. People simply felt that it was wrong—one might say dangerous—to have an ethnically homogeneous leadership in a multi-ethnic environment. Aware of right and wrong patterns, people felt that the right pattern needed to be followed, even in a completely innocuous, and pointless situation. This attitude was rooted in the experience which taught us that ethnic biases do exist, that they might come to the fore if the position at stake were more consequential, and that it is hardly possible to structure a stable multi-ethnic society in ECE countries without a balancing mechanism. Awareness of the real danger posed by an ethnic undercurrent and of the paramount importance of patterns of balance might explain Holbrooke’s unexpected turn of phrase—and implied

doubt in a Western axiom. In this situation, there was a real danger that elections might simply yield a result that reinforced existing ethnic inequalities in Bosnia.

I learned in Tito's Yugoslavia that law was not the main instrument for the implementation of patterns of balance. More oblique, flexible methods were used, imposing fewer restrictions on those who were in a decision-making position. In line with the one-party system, informal 'consultations' were much more important than elections, and chosen minority representatives were not necessarily people who had the confidence of a minority—the same often applied to representatives of the majority as well. Patterns of balance have also become, to a considerable extent, a matter of culture, and they were often followed, particularly at the local level, without arm twisting or 'consultations'.

One can also question whether law is, indeed, the tool best suited to implement patterns of ethnic balance. To illustrate the problem, suppose my background and experience lead me to the conclusion that it was neither a coincidence nor a result of choices based on merits that the judges in both O. J. Simpson trials—criminal and civil—were from Japanese origin. I accordingly conclude that these were choices based on the wisdom that in a case accompanied by racial tensions and divisions between blacks and whites, the most appropriate judge is someone who is neither black nor white. But this is hardly possible to lay down as a legal rule.

After the disappearance of Tito's mechanisms of power and authority, and after years in which politicians were using and abusing ethnic stereotypes to create a new basis of authority, it became difficult to avoid law as an instrument for accommodating ethnic interests and balance. After the ascension of Milošević to power, the election of judges was one of the first big debates in the Serbian Parliament. The issue was tainted by the Kosovo problem, and the balancing of ethnic undercurrents had to be posed as a legal question. Serbian Members of Parliament argued that judges, including lay judges, should be elected by the Serbian Parliament, rather than locally. The Serbian Parliament had a comfortable Serbian ethnic majority, while local elections in Kosovo could have been influenced—and determined—by the Albanian majority in Kosovo. 'Consultations' were not an available option. In post-Communist countries, elections can no longer be reduced to irrelevance.¹² Unfortunately, the problem was perceived by the Serbian Parliament as an 'either-or' issue, and the result was, predictably, a complete centralization of the election and dismissal of judges and lay judges.¹³ Possible compromises—such as

quotas, or multilevel elections that would allow some of the judges to be elected by the Serbian Parliament and the remainder by local constituencies—were outside the prevalent range and mode of thinking. A pattern was set in the wrong direction.

There are several ways in which legal regulation might offset ethnic undercurrents. One option is decentralization, that is, territorial and/or personal autonomy. Minorities could be allowed, for example, to organize their own schools. Financing could be arranged by a relatively simple regulation. If all schools were private, minorities should finance their schools with their own money. If schools are state schools, as they are in Yugoslavia, and financed by taxpayers' money, minority schools should receive at least the amount which corresponds to the input of minority taxpayers. On this basis, Hungarian schools in Vojvodina would receive 16.9 per cent of the total amount devoted to schools.¹⁴ In some instances, a blend of decentralization and centralization might be needed. Albanians in Kosovo might get protection through far-reaching territorial autonomy, but in this case, Serbs in Kosovo need either strong protection from Serbian authorities, or some kind of autonomy of their own, or both.

Another avenue of legal remedy is detailed regulation. I shall try to indicate the thrust of the problem through an example. Article 14(2) of the Council of Europe's Framework Convention for the Protection of National Minorities states: 'In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.' This is fine, but it leaves practically everything to interpretation, which is in the hands of state authorities, that is, the majority. Terms like 'adequate', 'as far as possible', or 'shall endeavour', are hardly sufficient shields against biases. More guarantees will be provided by rules such as s.43 of the 1993 Hungarian Act on National and Ethnic Minorities, which states that the state is obliged to start and maintain a minority language class if this is requested by not less than eight parents belonging to the same minority.

Various types of autonomy, interlocking patterns of decentralization and centralization, as well as detailed regulation may pose difficult drafting problems, but these are hardly avoidable in a multicultural society where rivalries persist.