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Robert M. Hayden

The results of the first free elections in Yugoslavia since World War II, held in 1990, set the stage for the civil war that broke out in summer and fall 1991. In those elections, strongly nationalist parties or coalitions won in each of the republics. In Croatia, Slovenia, Bosnia-Herzegovina and to some extent in Macedonia, nationalists asserted anti-communism in order to bolster their appeal and their legitimacy internationally, while the new Socialist Party of Serbia (née the League of Communists of Serbia) and the League of Communists in Montenegro effected Ceausescu-like transformations by turning nominally socialist parties into openly nationalist ones.¹ Even so, electoral support for the victorious nationalists was not particularly overwhelming.² The Croatian Democratic Union (CDU) garnered almost two-thirds of the seats in the Croatian Assembly while taking only about 40 percent of the popular vote, due to a badly written election law.³ In Slovenia, the DEMOS coalition took 53 percent of the vote but only as the combined total of six tiny-to-medium-sized parties, the largest of which received less of the popular vote than did the reformed Communist Party.

Once in power, the various nationalist governments faced a problem of combining practical politics and nationalist ideology. On the

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1. Cf. Katherine Verdery, *National Ideology under Socialism: Identity and Cultural Politics in Ceausescu's Romania* (Berkeley: University of California Press, 1991).

2. The best summary account of the 1990 elections is Dennison Rusinow, "To Be or Not To Be: Yugoslavia as Hamlet," *Field Staff Reports*, no. 18 (1991). The depictions of republican results must be modified in some details, such as the victory in the Slovenian presidential election of the "reform communist" Milan Kučan, at the same time that the anti-communist, nationalist DEMOS coalition won power in the republican assembly. Here, as elsewhere, the key to success was the message of nationalism more than the label of communist, or socialist or democrat.

3. In the elections in Croatia in August 1992, this result was repeated: Tudjman's HDZ won about two-thirds of the seats in the Croatian Sabor with only 42.9% of the votes cast. The flawed nature of the electoral law is seen in the election of Šime Djodan in a constituency in which he received only 23% of the vote but in which there were six other candidates, one of whom received 19.51% of the vote (*Vreme*, 10 August 1992).

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one hand, since “democracy” was the shibboleth for leaving “eastern Europe” and joining “Europe,”⁴ (meaning the European Community, NATO and all other putatively good things) all proclaimed their “democratic” nature. At the same time, however, the various nationalist governments had based their election campaigns largely on chauvinism. Each promised to deal firmly with the local minorities and to institute programs that would affirm each of their several republics as the nation-state of its dominant, ethnically defined nation (*narod*). All promised programs that would discriminate against minorities and favor majorities: affirmative action for the latter, “negative action” for the former. As basic elements of nationalist ideology and political appeal, such programs could not be discarded. In polities that were ostentatiously “democratic,” the political problem, however, was the need to justify discrimination since the protection of the rights of minorities is currently considered an essential element of European democracy. This was particularly a problem in the Yugoslav republics since each wished to develop its own legitimacy in the eyes of the “west,” thus justifying its secession from Yugoslavia and recognition as an independent state. At the same time, in view of their less than overwhelming victories in the various republics, nationalist parties had to seem to favor democratic politics in order to win domestic support from those suspicious of the dangers of chauvinistic nationalism in lands where the memories of the civil war of 1941–1945 were still live.⁵ Thus nationalism had to be clear to the faithful, yet in some way masked to avoid alienating either “the west” or the moderates in each republic.

The solution found in the various Yugoslav republics was the creation of systems of *constitutional nationalism*, by which I mean a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state. This type of structure reflects an old tension in central European politics and thought, a point to which I shall return. It is a departure, however, from currently accepted democratic constitutional norms which view the individual citizen as the basic subject of constitutions.⁶ Instead,

4. The apparently universal hostility to the label “eastern Europe” in the countries that had formerly been so called is exemplified in the title of the *Daedalus* (119, no. 1, 1990) volume dealing with the transition from state socialism in Europe: “Eastern Europe . . . Central Europe . . . Europe.” In Yugoslavia, hostility towards the “East” by the peoples of western Yugoslavia produced a crude political rhetoric of literal orientalism, privileging the Catholic or Protestant, formerly Habsburg, “progressive” northwestern republics over the Orthodox Christian or Muslim, formerly Ottoman, “backward” “Balkans” (see Milica Bakić-Hayden and Robert M. Hayden, “Orientalist Variations on the Theme ‘Balkans’: Symbolic Geography in Recent Yugoslav Cultural Politics,” *Slavic Review* 51, no. 1 [1992]: 1–15).

5. See Robert M. Hayden, “Recounting the Dead: The Rediscovery and Redefinition of Wartime Massacres in Late- and Post-Communist Yugoslavia,” in Rubie S. Watson, ed., *Memory and Opposition under State Socialism* (Santa Fe: School of American Research, 1993).

6. “Affirmative action” is an exception meant to prove the rule, since it is based on a theory of granting preferences to individual members of disadvantaged groups

constitutional nationalism envisions a state in which sovereignty resides with a particular nation (*narod*), the members of which are the only ones who can decide fundamental questions of state form and identity. As a mechanism for institutionalizing an unequal position for minority groups within a polity, constitutional nationalism is an example of what Stanley Tambiah, following M. G. Smith, has called "differential incorporation."⁷ The dangers inherent to a polity that is so structured are clear enough: as Tambiah notes,⁸ minority resentment may lead to demands for greater equality which, if unmet, turn easily into demands for secession. The Yugoslav republics of Croatia and Serbia each manifest this fissiparous tendency of constitutional nationalism: the overt nationalism of the majority in each has induced secessionist movements in the largest minorities (Serbs in Croatia, Albanians and [Slavic] Muslims in Serbia).

Constitutional nationalism in Yugoslavia bears special study for two reasons. First, the Yugoslav republics provide examples of the manipulation of the mechanisms and symbolisms of putatively democratic constitutionalism, thus affording opportunities to examine political doctrines that threaten the states that they are used to justify. Second, constitutional nationalism, which is based on the sovereignty of an ethnic group rather than on that of the equal citizens of the state, permits examination of the cultural assumptions behind the concept of sovereignty in the context of central (formerly eastern) Europe. As such, it may facilitate exploration of the reasons for manifestations of extreme hostility, to the point of genocide, by sovereign majorities against minority populations within this region. Finally, constitutional nationalism seems not to be confined to the formerly Yugoslav republics but rather to be developing in other parts of the world as well. Since constitutional nationalism discriminates against large, recognizable minorities, their resentment may make such systems unstable and hence prone to totalization and repression of dissent and of civil society, both disguised as protecting the majority nation.

Constitutional nationalism is expressed in its most open form in

in order to compensate for disabilities they have suffered by being members of those groups. In such systems the basic presupposition is that all citizens are indeed created equal but that some suffer under systemic social disadvantages and thus need special protection; and members of specific groups, defined by criteria such as race, gender or class, are given legal advantages not available to the majority which is presumed to enjoy overwhelming social or economic advantages already. Systems of "compensatory discrimination" exist in polities as divergent as the United States and India (see Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* [Berkeley: University of California Press, 1984]). The difference between "constitutional nationalism" and affirmative action is that constitutional nationalism privileges the majority while affirmative action attempts to compensate for the disadvantages suffered by minorities. Thus constitutional nationalism institutionalizes and reinforces discrimination, while affirmative action is meant to combat it.

7. Stanley Tambiah, "Ethnic Conflict in the World Today," *American Ethnologist* 16 (1989):335-49.

8. *Ibid.*, 347.

the December 1990 Croatian constitution. Croatia also presents a loaded political context fraught with nationalist strife since about 13 percent of the population are Serbs who remember well the genocidal campaign against them by the "Independent State of Croatia" set up by the Germans but run by Croat fascists in 1941–1945.⁹ A preliminary section of the constitution, entitled "Basic Sources," begins with an expression of the "thousand year national independence and state continuity of the Croatian nation" and the "historical right of the Croatian nation to full state sovereignty" as manifested by a series of states from the Croatian kingdom of the seventh century through the conclusions of the Joint Anti-Fascist Council in 1943 and the existence of the People's (later Socialist) Republic of Croatia from 1947–1990. It then states that in the historical overthrow of communism in 1990, the Croatian nation manifested its "thousand year state independence and determination to establish the Republic of Croatia as a sovereign state." After referring to the "inalienable . . . right of the Croatian nation to self-determination and state sovereignty," the Republic of Croatia is "established as the national state of the Croatian nation and the state of the members of other nations and minorities that live within it." In all of these passages, "Croatian nation" (*Hrvatski narod*) has an ethnic rather than political connotation and excludes those not ethnically Croat. Formally symbolic rather than legally binding since they are in the preamble to the constitution rather than within the operative text, these statements are accompanied by the symbolism of the republic's ethnically Croat coat of arms and flag (art. 11),¹⁰ and the specification that the official language and script of Croatia are "the Croatian language and Latin script" (art. 12), thus excluding the Serbian dialects and the Cyrillic alphabet customarily used to write them.

9. Of course, one of the reasons that they remember the genocide so well is the propaganda campaign carried out by the Serbian government to remind them of it (see Hayden, "Recounting the Dead"). On the other hand, this Serbian propaganda campaign has been helped by the official Croatian position which belittles the genocide; a stance also now taken, probably not coincidentally, by some otherwise serious Croatian intellectuals (see, e.g., Ljubo Boban, "Jasenovac and the Manipulation of History," *East European Politics and Societies* 4, no. 3 [1990]: 580–92 and its discussion in Robert M. Hayden, "Balancing Discussion of Jasenovac and the Manipulation of History," *East European Politics and Societies* 6, no. 4 [1992]: 207–12; and Ljubo Boban, "Still More Balance on Jasenovac and the Manipulation of History," *East European Politics and Societies* 6, no. 4 [1992]: 213–17).

10. Whether by calculated design or simply stunning insensitivity to the sensibilities of the Serbs of Croatia, the forms of the flag and coat of arms instituted by the CDU government in June 1990 were very similar to those used by the fascist "Independent State of Croatia" during World War II, under which hundreds of thousands of Serbs were killed. The use of these symbols seemed to confirm the Belgrade media's propaganda campaign that asserted that the new Croatian regime was indeed resurrecting the fascist Croatian state of fifty years earlier, and alienated many Serbs who rejected not only the symbols but the government that would impose them and the independent state it was trying to create. While these designs were modified within a few months, the damage to relations between the new Croatian state and the Serbs of Croatia was already done.

These symbolic establishments of Croatian supremacy are also accompanied by provisions stating that “national equality” is among the greatest values of the constitutional order (art. 3) and declaring the equality of members of all nations and minorities (art. 15[a]) and the “cultural autonomy” of the members of all nations and minorities (art. 15[b]). But the actions of the Croatian Democratic Union government, which wrote the constitution, did not reassure Serbs who were disarmed in 1990 at the same time that an “ethnically pure Croatian guard” was formed, who saw dual-script road signs torn down even in Serbian-majority areas, who have been made to sign loyalty oaths to Croatia and who have watched as programs of “negative action” have reduced their numbers in government employment.¹¹ They have also watched as Serbs who attempted to work within the governmental system established by the CDU have resigned in frustration at the refusal of the government to make any practical or symbolic concessions to Serbian concerns or fears. In the political environment of 1990–1991, the traditional legal rules of constitutional interpretation, which hold that the provisions of preambles are not binding but rather are to be used as aids in interpretation,¹² have been reversed: the preamble both states and reinforces constitutional nationalism despite the protections of the operative text.

Similar explicit formulations of constitutional nationalism are rising in other republics.¹³ 1989 amendments to the Slovenian constitution defined Slovenia as “the state of the sovereign Slovenian nation and citizens” of the republic and granted cultural rights only to the Hungarian and Italian minorities in the republic, which are relatively small.¹⁴ It thus seems that Slovenia established in 1989 a three-tiered

11. See Misha Glenny, *The Fall of Yugoslavia* (London: Penguin, 1992): 12–14. Of course, the fears of Croatia’s Serbs were again heightened by the propaganda of the Serbian government and local Serb officials, which portrayed the actions of the Croatian government in the worst possible light in order to ensure that Serbs would rebel against it (see Hayden, “Recounting the Dead”).

12. The legally binding provisions are those in the operative text (see Jovan Djordjević, *Ustavno pravo* [Belgrade: Savremena Administracija, 1982]: 129–30). I cite the dean of Yugoslav constitutional scholars but the point is generally accepted worldwide. Ironically, the heavy use of symbolic preambles in the “self-management” constitutional structures of 1974 was regarded by Yugoslav constitutional lawyers as one of the major weaknesses of those documents. Evidence of the potency of the symbolic preambles in Yugoslav constitutionalism is that the renowned “right to secession” in the 1974 Constitution was contained only in the “Introductory Part” but was treated as if it were one of the operative articles.

13. In the analysis that follows I make no reference to the Constitution of Montenegro for several reasons. First, since the “anti-bureaucratic revolution” of 1988 in which Slobodan Milošević’s supporters gained control over Montenegro, that republic has been so dominated by Serbia as to have almost no political identity of its own. Perhaps for this reason the Montenegrin Constitution was not amended between 1989 and November 1992; and the new text is not available to me as this article goes to press. But in any event, the political subordination of Montenegro renders its constitutional arrangements least interesting of all those in the Yugoslav republics.

14. See Robert M. Hayden, “The Beginning of the End of Federal Yugoslavia:

set of national privileges: first the “sovereign Slovenian nation,” second the “autochthonous minorities,” third (and with no constitutionally recognized cultural rights) members of any other national group who, in fact, form the largest minority populations in Slovenia. This structure was continued in a draft of the constitution of the Republic of Slovenia prepared by the Commission for Constitutional Questions of the Slovenian Parliament, dated 12 October 1990. The Preamble noted that “we Slovenes have won our own national independence and our own statehood,” while article 1 provided that “The Republic of Slovenia is a sovereign state, based on the inalienable right of the Slovene nation [*narod*] to self-determination.” In regard to minority rights, the October 1990 draft again excluded other minorities by specifying rights for only the Italian and Hungarian “autochthonous minorities” (art. 3 [alternative text]; art. 10). As enacted in 1991, the Slovenian Constitution retains much of this rhetoric, referring in the Preamble to “the basic and permanent right of the Slovene nation [*narod*] to self-determination” and “the historical fact that the Slovenes have formed . . . their own national identity and established their own statehood.” It defines Slovenia as “a state of all its citizens, based on the permanent and inviolable right of the Slovene nation to self-determination.”¹⁵

In Macedonia, a statement on state and legal relations within Yugoslavia issued by the Executive Council of the Republican Assembly in fall 1990 put forth the position that Macedonia is the “national state of the Macedonian nation [*narod*] founded on the sovereignty of the nation.”¹⁶ The statement included other references to the sovereign rights of the Macedonian nation but also defined Macedonia as a democratic state of citizens, thus setting up the inherent conflict of constitutional nationalism with current European views of democracy. When the Constitution of the Republic of Macedonia was proclaimed on 20 November 1991, however, the Preamble apparently took its cues primarily from that of the Croatian constitution of 1990:

Resting upon the historical, cultural, spiritual and statehood heritage of the Macedonian people and upon their centuries' long struggle for national and social freedom, as well as for creation of their own state, and particularly upon the statehood-legal traditions of the Kruševo Republic and the historical decisions of the Antifascist Assembly of the Peoples' Liberation of Macedonia . . . as well as upon the historical fact that Macedonia is established as a national state of the Macedonian people providing full citizens' equality and permanent cohabita-

The Slovenian Amendment Crisis of 1989,” *Carl Beck Papers in Russian and East European Studies*, no. 1001 (Pittsburgh: Center for Russian and East European Studies, University of Pittsburgh, 1992).

15. Vojin Dimitrijević, “Ethnonationalism and the Constitutions: The Apotheosis of the Nation-State,” paper presented at the conference on “Issues of Identity in Contemporary ‘Yugoslavia,’” University of Kent at Canterbury, 20–23 August 1992, 3–4.

16. *Borba*, 17 October 1990, 4.

tion of the Macedonian people with . . . [the] nationalities living in the Republic of Macedonia. . . .

The Assembly of Macedonia thereby justified adoption of the Constitution. Unlike the 1990 Croatian Constitution, however, the 1991 Macedonian Constitution enunciates repeatedly the idea of peaceful cohabitation with the minority nations in Macedonia and provides (art. 78) for the establishment of a Council for Interethnic Relations in the Republican Assembly, composed of the President of the Assembly and "two members each of the Macedonians, Albanians, Turks, Vlachs, Rhoma [sic] as well as two from the ranks of other nationalities in Macedonia." The Council is charged with considering issues of interethnic relations within the republic and providing assessments and proposals for their solution to the assembly which is required to consider them (but not to adopt them; art. 78).

Serbia presents a more covert form of constitutional nationalism since the 1990 Serbian Constitution defines the Republic of Serbia in explicitly non-ethnic or national terms, as "the democratic state of all citizens living within it" (art. 1) in which "[s]overeignty belongs to all citizens of the republic" (art. 2) and which recognizes the "national" and "cultural" rights of man and citizen (art. 3). However, its Preamble also makes reference to "the centuries'-long struggle of the Serbian people" and to their determination to "create a democratic State of the Serbian people." Further, the 1990 Serbian Constitution differs from the other republican constitutions because of its covert political aims. Where the other republican constitutions represent more or less serious attempts to provide the basis for a nation-state grounded on constitutional nationalism, the primary purpose of the Serbian constitution of 1990 was to provide the basis for the one-man rule of Slobodan Milošević.¹⁷ Thus its various statements of national equality are probably about as relevant as the statements of rights and freedoms in the Constitution of the USSR of 1936. In any event, the likely impact of the 1990 Constitution on minorities in Serbia can be gauged more accurately when it is recognized that it was enacted to reestablish Serbia's "full sovereignty" and to remove constitutional mechanisms for self-rule by the largest minorities in the republic.¹⁸ By failing to provide such mechanisms, the Serbian Constitution has afforded scope for the establishment of a nationalist regime fully as oppressive of minorities as those of any of the other ex-Yugoslav republics.

The Constitution of the Federal Republic of Yugoslavia (1992), like the 1990 Serbian Constitution, must be viewed primarily as a vehicle

17. Kosta Čavoški, *Slobodan protiv slobode* (Belgrade: Dosije, 1991): 107–10; and Pavle Nikolić, "Institucija Predsednika Republike i promašaji i nedorečenosti Ustava Republike Srbije od 1990," *Arhiv za pravne i društvene nauke* 77 (April–September 1991): 287–95. Of course, in an important sense, this indicates that Serbia, unlike the other republics discussed, is almost not a constitutional state at all since a constitutional dictatorship is a contradiction in terms.

18. Borisav Jović, *Datum za historiju: 28. mart 1989* (Belgrade: BIGZ, 1989).

for maintaining the personal power of Slobodan Milošević rather than as a serious constitutional document. However, this “Yugoslav” Constitution exhibits at least one symbol of Serbian national identity that is omitted in the Serbian Constitution of 1990: while the latter (art. 8) states that the official language of the republic is Serbo-Croatian in the Cyrillic alphabet, the federal constitution (art. 15) states that the official language is Serbian in the Cyrillic alphabet.

Finally, mention must be made of Bosnia-Herzegovina. While that republic was granted recognition as an independent country and accepted into the United Nations in April and May 1992, by December of that year this “state” did not, in fact, exist since it controlled almost none of its territory and its authority was denied by many of its putative citizens, perhaps by a majority of them. The constitutional arrangements of this phantom state are of interest primarily because they are contrary to those of the other republics and also contrary to the political processes that were taking place in Bosnia-Herzegovina as well as elsewhere in Yugoslavia.

Until late 1992, constitutions in Bosnia-Herzegovina did not reflect constitutional nationalism. The 1974 constitution stressed the equality of the constituent nations of Bosnia-Herzegovina (e.g. arts. 1, 2, 3). However, after 1989 the politics of the republic were driven by the same nationalist forces that dismembered Yugoslavia. Thus the result of the 1990 elections read like a census of the republic’s national groups, with nationalist parties of the three major groups taking 80 percent of the vote in proportions reflecting their percentages of the population. While the leaders of the groups agreed to share power, at the level of each *opština* the victorious party of the majority ethnic group took absolute control over local government, purging all not of their nation.¹⁹ At the republican level, agreement of all three major parties would have been necessary to enact a new constitution but this could not be achieved and no constitution could be adopted. In October 1991 the Serbian Democratic Party’s representatives walked out of the Bosnia and Herzegovina parliament in protest over the agreement of the Muslim and Croat parties to vote to proclaim the sovereignty of the republic.²⁰ After that walkout Bosnia and Herzegovina was in the same constitutional position as the Socialist Federal Republic of Yugoslavia after Slovenia and Croatia withdrew from the federal parliament, with the same constitutional (il)legitimacy and the same impossibility of establishing any political consensus, to say nothing of enacting a constitution.

This lack of consensus on constitutional structures is reflected in

19. Vladimir Goati, “Politički život Bosne i Hercegovine 1989–1992,” in Srdjan Bogosavljević, Vladimir Goati, Zdravko Grebo, Jasminka Hasenbegović, Dušan Janjić, Branislava Jojić and Paul Shoup, *Bosna i Hercegovina između rata i mira* (Beograd and Sarajevo: Forum za etničke odnose, 1992): 48–49.

20. The political developments in Bosnia and Herzegovina are best analyzed in the various contributions to *Bosna i Hercegovina između rata i mira*.

the *Report of the Co-Chairmen [of the International Conference on the Former Yugoslavia] on Progress in Developing a Constitution for Bosnia and Herzegovina* and its appended "Proposed Constitutional Structure for Bosnia and Herzegovina" of 27 October 1992.²¹ This *Report* states frankly that

two of the parties contend that, in designing a government for the country, a predominant role must be given to these "constituent peoples" [Muslims, Serbs and Croats]. The other party considers that there should be no such overt recognition, although it admits that the political processes of the country have been and are likely to continue to be characterized by religio/ethnic factors.²²

The "Proposed Constitutional Structure" would treat this impasse by creating a highly decentralized state of seven to ten provinces. The boundaries of these provinces would be drawn on geographic rather than ethnic criteria but it is recognized that "[g]iven the demographic composition of the country, it is likely that many of the provinces (but not necessarily all) will have a sizeable majority of one of the three major groups."²³ The federal government would have minimal powers and the federal units would retain exclusive jurisdiction over such areas of governmental and social concern as police, financial institutions and radio and television, among others. The rights of minorities would be protected through rotation of federal functions and through the activities of special organs such as an International Commission on Human Rights for Bosnia and Herzegovina, four ombudsmen and a human rights court. There would be only one citizenship of Bosnia and Herzegovina, and no ethnic identification of citizens could be required on official documents; however, dual citizenship (with other states) would be permitted.

The "Proposed Constitutional Structure for Bosnia and Herzegovina" was thus perhaps the only constitutional document in play in what was Yugoslavia in 1992 that was not based on constitutional nationalism. At the same time, this document was not drafted by any of the democratically elected leaders in Bosnia and Herzegovina but rather by the International Conference on the Former Yugoslavia.²⁴ Further, the "Proposed Constitutional Structure" resembles nothing

21. International Conference on Former Yugoslavia, document STC/2/2, 27 October 1992. References to this document in this article are to a typescript version provided by the Geneva offices of the International Conference on the Former Yugoslavia.

22. *Ibid.*, 7. The first two parties to which reference is made are the Serbs and Croats, the third the Muslims.

23. *Ibid.*, 6.

24. The "Proposed Constitutional Structure for Bosnia and Herzegovina" does show many similarities to the "Theses for a Model Constitution of the Republic of Bosnia and Herzegovina" put forth by Zdravko Grebo and Branislava Jojić ("Teze za Model Ustava Republike Bosne i Hercegovine," in Bogosarljević et al., *Bosna i Hercegovina između rata i mira*, 134–49). Significantly, these authors were completely outside of the nationalist parties that could not agree on any constitutional structure and thus drove Bosnia and Herzegovina into civil war.

so much as the Yugoslav federal Constitution of 1974 and the proposed (or perhaps wishfully thought) "state" of Bosnia and Herzegovina could be paralyzed by the refusal of provincial governments to honor central authority in the same way that the Slovenes pioneered the destruction of the Yugoslav federation in 1989.²⁵

The travails of constitutionalism in Bosnia and Herzegovina since 1990 thus illustrate the incongruity between the supposed norms of European democracy and the national chauvinist politics that destroyed Yugoslavia. The irony or perhaps tragedy of the situation is that these politics were justified as "democratic" and accepted as such by the European Community and the United States on the grounds of "self-determination." The incompatibility between self-determination as political ideology and democratic constitutionalism as recommended by the European Community and the United States is thus apparent²⁶ but its implications must be explored.

The sovereignty of the ethnic nation (*narod*) requires the definition of its subject since only one entity may be sovereign. Constitutional nationalism both establishes and attempts to protect the construction of a nation as a bounded unity: a sovereign being with its own defining language, culture and perhaps "biological essence," the uniqueness of which must be defended at any cost. This concept of nationalism was made explicit by Croatian President Franjo Tudjman²⁷ in a theoretical treatise on nationalism published in English in 1981: "Nations . . . grow up in a natural manner . . . as a result of the development of all those material and spiritual forces which in a given area shape the national being of individual nations on the basis of blood, linguistic and cultural kinship."²⁸ This view of "nation" as a kind of collective individual defined in part by shared physical substance²⁹ has disturbing impli-

25. See Hayden, "The Beginning of the End of Federal Yugoslavia."

26. This incompatibility is explored in Lewis Namier, *The Revolution of the Intellectuals* (Oxford: Oxford University Press, 1992 [orig. 1946]), 24–27.

27. My citation of Tudjman should not be taken to imply that I am focusing only on Croatian nationalism or on him as a politician. To the contrary, Tudjman is cited because as a historian he has provided a body of works that explore these issues, making explicit the concepts that seem implicitly to drive other Yugoslav politicians as well as his own actions. Of course, the fact that in 1990 he made the transition from dissident nationalist intellectual to popularly elected nationalist President of Croatia, and was re-elected in 1992, gives his ideas on nationalism special credence as formal expressions of sentiments shared more widely.

28. Franjo Tudjman, *Nationalism in Contemporary Europe* (Boulder: East European Monographs, 1981), 13.

29. For American anthropologists, Tudjman's formulation of "blood, linguistic and cultural kinship" sounds suspiciously familiar to Franz Boas's famous title, *Race, Language and Culture* (New York: Macmillan, 1940). Boas's work was aimed at refuting commonly held views that race, language and culture are related mechanically and that they can be ranked hierarchically, and cultural relativism has been the dominant presupposition of the field since then. The tenets of each Yugoslav nationalist ideology run precisely counter to this presupposition and examining them forces American anthropologists (and perhaps other intellectuals) into the frustrating and deeply disturbing position of trying to put stakes into the hearts of conceptual vampires which we had thought (or perhaps hoped) were destroyed long ago.

cations for it can easily be transformed into racism (a step that Tadjman expressly rejected in his treatise). Empirically, racist views of the Yugoslav nations should be disproved by the widespread practice of intermarriage, although “mixed” marriages have been under pressure since 1991.³⁰ Even in the most homogenous republic, Slovenia, only 73 percent of the children listed on the 1981 census issued from “ethnically pure” Slovenian marriages, while in the most bitterly contested areas of Croatia (e.g. Eastern Slavonija) as many as 35 percent of the children born in 1981 were from mixed Serb-Croat marriages.³¹ Yet the ethnic homogenization of the republics is a key nationalist goal, which in such mixed settings may well take on racist implications.

The cultural concomitants of national identity are also being increasingly viewed as bounded, determinate structures of language, belief, religion, practice. In a return to an old European concatenation, a given nation is seen as having a single language, a single culture, a single heritage, a single interest. This view of the nation as collective individual is linked to the concept of nation-state as an individual actor through the linked concepts of national sovereignty and self-determination. To again quote Tadjman, “Every nation, no matter what its size or character, has the natural and historic right to its sovereignty and a place in the human community, *just as the individual has in society*. . . . Only a free and sovereign nation, *like a fully developed and free human being*, can give its full contribution to the world.”³² And in another established European pattern, the state justified on the existence of the nation moves to solidify the cultural boundaries of the individual nation, differentiating it from others. Or, as Hobsbawm puts it, the state makes the nation, not the nation the state.³³ A constitution, as the definition of the state, may make the connection between state and (ethnic) nation clear through the rhetoric of constitutional nationalism.

The centrality of sovereignty to the nationalist governments of the post-communist Yugoslav republics has been seen by some Yugoslav analysts as the key to a new ideology. As a dissident³⁴ Slovenian writer

30. See *Vreme*, 11 March 1991: 30–33.

31. *Borba*, 30 September 1991: 11.

32. Tadjman, *Nationalism in Contemporary Europe*, 289.

33. Eric Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990), 10. While the point cannot be pursued here, the history of “ethnology” in eastern Europe points to the close links between this “science” of national customs and the political need to define the true essence of the nations supporting the ethnographic establishments (see Eugene Hammel and Joel Halpern, “Observations on the Intellectual History of Ethnology and Other Social Sciences in Yugoslavia,” *Comparative Studies in Society and History* 11 [1969]: 17–26).

34. In one of the many ironies of post-1989 Yugoslavia, many social democrats remain in opposition to the new rulers of the various republics. The phrase quoted, which would be heretical in official circles in Slovenia, was printed in the newspaper of the Democratic Party in Serbia, a party itself in opposition. At the same time, we should note that the number of “dissidents” in the former Yugoslavia has declined dramatically even as civil liberties have been restricted drastically by authoritarian

put the matter in 1990, nationalism has “exchange[d] the ideology of the universal liberation of ‘the working class’ for the ideology of ‘total national sovereignty.’ This is not in any sense a matter of rational categories, but rather of sovereignty as a value in itself, as the highest value, the cost of which is irrelevant.”³⁵ In terms of ruling formal ideologies, one might thus view the transition in each Yugoslav republic as having been from state socialism to state chauvinism and the class enemy as being replaced by the traitor to the ethnic nation, now politically sovereign.

This transformation of ideology may be seen in the constitutions of the ex-Yugoslav republics, compared to the ideological underpinnings of the 1974 federal Constitution. As Slobodan Samardžić has noted,³⁶ that constitution envisioned a form of dual sovereignty, the bearers of which were the “working class and all working people” on the one hand, and the “nations and nationalities” of Yugoslavia on the other. In essence, this dualism may be seen as an attempt to bridge the gap between the two great organizing principles of European political thought since the early nineteenth century: class and nation.³⁷ However, as Samardžić says, this was a risky strategy because it based one sovereignty on the ideological basis of “self-management socialism” and, with the demise of that ideology, “the state order lost one of its sovereigns.”³⁸ All that remained was the nation and the ideology of nationalism. In central Europe, of course, nationalism as constitutional ideology has a long history and the adoption of state chauvinism as a constitutional ideology may thus have marked the entry of all of the former Yugoslav republics into “central Europe.”

Viewing the ideological transition in this way may seem overly facile, especially since it ignores the distinctive features of socialist economics. Yet the ideological comparison is useful because it reminds us that in these nationalist configurations, as in socialist ones, the individual citizen is subsumed by the group, nation displacing class as the basic category of social thought or, in Ernest Gellner’s depiction, as contenders for identification as the real dramatis personae of history.³⁹ As Tudjman’s formulation of the concept shows, the nation becomes a sort of collective individual, against whom physical individ-

nationalist regimes. Apparently one can be a “dissident” only against communism. A critic of a nationalist regime is, instead, a traitor.

35. Mile Šetinc, “Da li je građanski rat u Sloveniji završen?” *Demokratija* (Beograd) 1(10–11; 3 August 1990): 17.

36. Slobodan Samardžić, *Jugoslavija pred iskušenjem federalizma* (Beograd: Stručna Knjiga, 1990).

37. See Roman Szporluk, *Communism and Nationalism: Karl Marx Versus Friedrich List* (Oxford: Oxford University Press, 1988). With this in mind, anthropologists might see Yugoslav self-management federalism as fitting Levi-Strauss’s definition of myth since it sought to bridge categories that cannot, in fact, be joined.

38. Samardžić, *Jugoslavija pred iskušenjem federalizma*, 31.

39. Ernest Gellner, “The Dramatis Personae of History,” *East European Politics and Societies* 4, no. 1 (1990): 116–33.

uals have no standing. Counter to the “modern ideology” and to dominant liberal theories of both market economics and political democracy since at least the late eighteenth century,⁴⁰ this subsuming of the individual by the group transforms the nationalist state into a potentially totalizing one, one claiming the right to define not only the identity of the nation but also of the actual individuals who comprise this corporate individual. Such definition is manifested in laws defining citizenship, which are an integral part of regimes of constitutional nationalism.⁴¹ The most basic rights in the new republics will be determined by citizenship: not only the rights to vote and stand for election, but the right to own property, the right to work, even the right to reside in what has always been one’s home. The distinctions to be made are not between newcomers and natives, however, but largely between peoples who have long lived in the republic in which they found themselves when Yugoslavia disintegrated in 1991-1992. In a sense, the effect of the citizenship laws will be the reverse of naturalization in the United States and will turn people in the various republics who had been fellow citizens in federal Yugoslavia (and thus guaranteed equal rights in all republics under the federal Constitution [art. 249]) into foreigners with very few rights of any kind. At the same time, at least some republics are considering laws that would permit people who are citizens of other states (and who may never have been to the territory of Yugoslavia) to become citizens by virtue of ethnic heritage. While this latter kind of law is not unknown in the world—Israel and Ireland spring immediately to mind—the combination of denaturalization of large numbers of residents and adoption of large numbers of non-residents is unusual, to say the least.⁴² A better example of the power of the imagined community⁴³ to destroy actually existing communities would be hard to find.

40. See Louis Dumont, *From Mandeville to Marx: The Genesis and Triumph of Economic Ideology* (Chicago: University of Chicago Press, 1977); Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before its Triumph* (Princeton: Princeton University Press, 1977).

41. Unfortunately, I have not been able to obtain drafts or texts of actually enacted citizenship laws and am thus forced to rely mainly on accounts from the news media for information in this section, along with Vojin Dimitrijević’s exceptionally helpful paper on “Ethnonationalism and the Constitutions: The Apotheosis of the Nation State.” Since the laws are in process, however, and in any event may be implemented in ways at variance with what officials say about them, these accounts are extremely useful. Connoisseurs of the Yugoslav press since 1990 will note that my sources are the independent Belgrade papers *Borba* and *Vreme*, easily the most reliable of the press media in what used to be Yugoslavia (see Robert M. Hayden, “Yugoslavia: Politics and the Media,” *RFE Report on Eastern Europe*, 6 December 1991).

42. Similar citizenship laws have been or are being enacted in the Baltic republics, however: see *New York Times* (7 September 1991: 1) on Latvia; *New York Times* (10 August 1992: A6) on Estonia; and *New York Times* (22 November 1992: 1) on all three Baltic republics. In the Estonian election on 20 September 1992, 40% of the country’s inhabitants could not vote because they were of the wrong ethno-national background (*The Economist*, 26 September 1992: 18, 55).

43. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised edition (London: Verso, 1991).

Proposed citizenship laws often would require long residence by those hoping to be admitted. A draft law discussed in Slovenia in late 1991 would require a candidate for citizenship who was born outside of Slovenia to demonstrate ten years' residence in the republic, the last five of them continuous, plus knowledge of the Slovenian language to the satisfaction of a commission and other requirements.⁴⁴ At the same time, many of these requirements are waived for "Slovene emigrants and their descendants up to the third generation"—the term "Slovene emigrants" implying ethnicity and not equating "emigrants from Slovenia."⁴⁵ In Macedonia in mid-1992, the government proposed a requirement of five years of continuous residence for citizenship but the ultranationalist VMRO-DPMNE wanted to require *fifteen* years of continuous residence.⁴⁶ While residency requirements for naturalization are common enough in the world, these are very long. As for other requirements, it is obvious that seemingly neutral tests and requirements can be manipulated to discriminate against some classes of citizens. Indeed, the US Supreme Court has long required "strict scrutiny" of such tests, rejecting their over-rigorous application, following the uncovering of pervasive use of supposedly objective literacy and residence tests to exclude black people from enrolling as voters in southern states.

An interesting new twist in these laws is the assertion of special rights for members of the "state nation" who are not actually citizens of the state. The 1991 Slovenian Constitution (art. 5) provides that "Slovenes without Slovenian citizenship can enjoy special rights and benefits in Slovenia." In the Croatian elections in 1990 and 1992, ethnic Croats outside of Croatia were allowed to vote, even when they were not citizens of Yugoslavia (1990) or Croatia (1992). Similarly, several east European constitutions (e.g. Hungary, Romania and Albania) assert a right of their state to protect members of the "state nation" who are citizens of other states—provisions dubious under international law and likely to be dangerous for international relations.⁴⁷

Evidence that the new Yugoslav republics may themselves apply "strict scrutiny" to some categories of applicants for citizenship can be seen in the documents required of applicants for citizenship in the new Federal Republic of Yugoslavia: evidence of citizenship (of Serbia or Montenegro) for the applicant plus photocopies of proof of citizenship for both of his or her parents, and birth certificate and proof of citizenship for the applicant's spouse. For children, evidence of citizenship of both parents is required.⁴⁸ While such requirements may be simply a continuation of the overzealous bureaucracy long familiar

44. *Borba*, 2 November 1991: 9.

45. Dimitrijević, "Ethnonationalism and the Constitutions," 5.

46. *Vreme*, 3 August 1992: 17.

47. Dimitrijević, "Ethnonationalism and the Constitutions," 4–5.

48. *Vreme*, 3 August 1992: 16–17.

to citizens of central and eastern Europe, the opportunity thus provided to deny citizenship to applicants is also apparent. It might be suggested that the next several years will see a form of bureaucratic "ethnic cleansing" in which, for example, ethnic Serbs from Croatia who are residents of Serbia will acquire Serbian citizenship, while ethnic Croats from Croatia who have resided in Serbia for just as long will not; or ethnic Slovenes from Croatia will attain Slovenian citizenship while their ethnic Croat or Serb neighbors, also immigrants, will not; or the children of ethnic Croats from Croatia who were born outside of that republic will attain Croatian citizenship while the children of ethnic Serbs from Croatia who were born outside of the republic will not. Often members of the latter group in each of these cases will leave, thus accomplishing the same goal as denial of citizenship.

The determination of legal benefits by ethno-national class may rival the excesses of the communists' determination of legal benefits by social class. The property of members of "enemy" nations is as subject to destruction and confiscation in 1992 as was the property of the bourgeoisie in 1945. One suspects that an unfortunate ethnic heritage may be as much a handicap in public life in systems of state chauvinism as an unfortunate class background was in many systems of state socialism. Thus the state defined by state chauvinism is likely to be as totalizing as were those defined by state socialism. In the formerly Yugoslav republics, the chances of developing a "civil society" seem remote, as can be seen in the techniques of control now being exerted in them over the incipient "civil society" that had existed in Yugoslavia under the last decade of communism.⁴⁹ In what was Yugoslavia, the press, once the most free in the world of state socialism, has been brought under rigorous control.⁵⁰ In Serbia, the government tried to impose a statute governing the university that would have removed any autonomy from the academy by giving the government explicit authority to appoint academic administrators down to the level of dean of the individual faculties, which was eventually passed in a somewhat modified form that gives faculty some potential say in selecting administrators.⁵¹ Direct control over young men has been asserted through conscription and, in November 1991 in Serbia and Croatia, through prohibitions on foreign travel of potentially draft-age

49. See Robert M. Hayden, "Yugoslavia: From Civil Society to Civil War," paper presented at the annual meeting of the American Anthropological Association, Chicago, 21 November 1991.

50. Hayden, "Yugoslavia: Politics and the Media."

51. *Vreme*, 10 August 1992. The first meeting of the new, government-appointed Council of Belgrade University was described by once-and-present dissident Professor Zagorka Golubović as a manifestation of the government's "preparedness to violate all rules of democratic procedure in order to forcibly impose its will on the university and extinguish its autonomy." On the other hand, once-dissident Professor Mihailo Marković, now Vice President of the ruling Socialist Party of Serbia, was quite satisfied with the session (both professors' comments are in *Borba*, 20 November 1992:9).

men (up to age 50), thus ending the tradition of freedom to travel that since 1965 had been another distinguishing feature of Yugoslavia's special brand of communism. Of course, the catastrophe of Bosnia-Herzegovina in 1992 makes any reference to "civil society" by politicians who have brought on and now continue the civil war seem a joke in extraordinarily poor taste. As the war has intensified in what was Yugoslavia, the social space for non-state action or for fostering independent thought has shrunk.

The link between "national sovereignty" as the basis of constitutional nationalism and as the root concept of a totalizing ideology reveals the structural flaw of any political edifice based on this principle. Crudely put, the excluded minorities of a state based on constitutional nationalism have no future in a polity so defined. As a people they will be disfavored; as individuals they will face discrimination. Thus constitutional nationalism, while effective as a tool for cementing majoritarian support, must alienate the minorities against whom it is directed; and they will be prone to favor secession from a polity that defines its essence as based on their exclusion. Constitutional nationalism therefore builds a massive structural flaw into the polity that it is meant to define, since the permanent exclusion of minorities will likely make them at best indifferent and at worst hostile to the state.

At the same time, the rhetoric of democracy that adorns the state defined by constitutional nationalism can be used to delegitimize minority protest. If all are putatively equal (even if actually unequal), resistance to institutionalized inequality may be viewed by the dominant ethnic group as hostility towards themselves and not to the constitutional nationalist state. Throughout Yugoslavia, majoritarian politicians have made the most of the opportunities afforded by this point of view. The result is to further the processes of polarization, rendering the nationalist state even more illegitimate to minorities and the presence of these "hostile" minorities inimicable, in the eyes of many in the majority, to the majority nation's "right to self-determination."⁵² Of course, the steps "required" to deal with separatist minorities will often reduce the chances for democratic politics even within the majority community. Stanley Tambiah makes this point from the experience of Sri Lanka,⁵³ but it will be immediately clear to those who

52. This "right," which is enshrined in a number of international legal documents, is expressly limited by those same documents: the right to self-determination cannot be used to deprive minority populations of their own cultural, linguistic or other rights (see, e.g. International Covenant on Civil and Political Rights, 99 U.N.T.S. 171, 6 I.L.M. 368 [1967], arts. 26 and 27). The basic concept of political sovereignty, however, means that these limitations cannot be enforced, a failing to which the Kurds provide excellent testimony. The term itself seems to have been misappropriated: one can hardly imagine that Woodrow Wilson envisioned self-determination as achieved by ethnic cleansing, either military or bureaucratic.

53. Stanley Tambiah, *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago: University of Chicago Press, 1986).

have watched the stillbirth of democracy in various of the formerly Yugoslav republics, specifically in Serbia.

The problems of a house divided are not likely to be solved even when it is broken up into smaller units, particularly since the condominium solution—federation—is rejected out of hand by calls for *total* national sovereignty. An ironic consequence of the partition of what had been federal states is that secession is likely to increase irredentism and thus leave the newly separated states in a condition of permanent hostility and confrontation.⁵⁴ This result is explicable by the inconsistency of international law which simultaneously favors both self-determination and the sanctity of frontiers, two principles that must conflict in real-world states that are ethnically heterogeneous—though they *could* be congruent if states were homogenous. This last thought prompts the question of whether the apparently conflicting principles of international law reflect a deeper and unstated assumption of modern western thought concerning the inherent nature of international society and the “proper” composition of sovereign states.

The centrality of sovereignty in interstate relations should not obscure the cultural assumptions that seem to underlie it in its nationalist guise. As Louis Dumont has reminded us, the concept of territorial sovereignty—a state sovereign over all within its boundaries—is distinctly modern;⁵⁵ indeed, even the concept itself of a geographically bounded polity may not have existed in many non-European societies until the period of European colonialism.⁵⁶ Older forms of sovereignty are based on the duties and obligation of loyalty of members of social, religious or ethnic groups to the group and its leaders, regardless of where they are found.⁵⁷ While some elements of these distinctions remain in the recognition of different rights and obligations for citizens and resident non-citizens within the territory of a state, citizenship in the modern conception is a leveling category: all citizens are or should be equal.

When the “nation” is defined in terms of race, language and culture, this equality of citizenship is impossible. Even if one were to accept as legitimate the concept of “separate but equal,” those not of the dominant ethnic group must be politically subordinate. Hence the concept of “national sovereignty” precludes the modern concept of territorial sovereignty based on a polity of equal citizens—unless the citizens are all of one nation. For this reason, Franjo Tudjman sees the

54. Donald L. Horowitz, “A Harvest of Hostility: Ethnic Conflict and Self-Determination after the Cold War,” revised version (14 August 1992) of paper presented at the Defense Intelligence College Conference, “Ethnic Conflict: Challenge to U.S. Security?” Washington, DC, 23 June 1992.

55. Louis Dumont, “Are Cultures Living Beings? German Ideology in Interaction,” *Man* (n.s.) 21 (1986): 587–604.

56. See Anderson, *Imagined Communities*, 170–78.

57. The vestiges of such non-territorial personal jurisdiction may be seen in the western world in the continued existence of ecclesiastical courts.

process of ethno-national homogenization as inevitable, even when it includes genocidal acts. In his words,

throughout history there have always been attempts at a "final solution" for foreign and undesirable racial-ethnic or religious groups through expulsion, extermination, and conversion to the "true religion." . . . It is a vain task to attempt to ascertain the rise of all or some forms of genocidal activity in only some historical periods. Since time immemorial, they [genocidal practices] have always existed in one or another form, with similar consequences in regard to their own place and time, regardless of their differences in proportion or origin. . . . Reasoning that would assign genocidal inclinations, reasoning or goals to only some nations or racial-ethnic communities, to only some cultural-civilizational spheres and social-revolutionary movements, or to only some individual religions and ideologies is completely mistaken and beyond any thought of historical reality.⁵⁸

This is not to say that Tadjman personally condones genocide. Quite the contrary: he has said that those who have killed nations are criminals in the eyes of history.⁵⁹ However, as a historian, he clearly views the reprehensible acts of genocide as inevitable for the creation of a true nation-state in a multinational region.

One need not accept Tadjman's conclusions, however, to see his arguments as revealing a conceptual basis for the ferocity of the clash of nationalisms in central Europe. While his writings are concerned primarily with conditions specific to Croatia, the tension they exemplify between the concepts of territorial sovereignty, based on a polity of equal citizens, and national sovereignty, based on the exclusive right of the members of one ethnic group to their own state, resemble the tensions that Dumont has identified in "German ideology" between individualism and ethno-national community.⁶⁰ Dumont has seen the "totalitarian disease" of national socialism as an aberration from modern ideology because of its transformation of the principle of individualism (which implies the struggle of all against all) into a philosophy of inherent racial conflict and extermination. The ideology of nation as collective individual based on race, language and culture also provides the conceptual basis for the polarization of populations into components of nations and for their differential treatment on the basis of national identity. Indeed, the ideology of national sovereignty, of the right to national self-determination, effectively requires such discrimination, for without it the boundaries of the majority nation cannot be maintained.

Hitler, of course, for reasons that Dumont sees as partly tactical,

58. Franjo Tadjman, *Bespuća povijesne zbiljnosti* (Zagreb: Nakladni Zavod Matice Hrvatske, 1990), 166.

59. Tadjman, *Nationalism in Contemporary Europe*, 289.

60. Louis Dumont, "The Totalitarian Disease," in Louis Dumont, *Essays on Individualism: Modern Ideology in Anthropological Perspective* (Chicago: University of Chicago Press, 1986).

partly philosophical and partly idiosyncratic, defined groups in terms of race rather than nation: according to Hitler the history of all hitherto existing society is the history of race struggles (and Dumont persuasively argues that Hitler meant his movement to be “a sort of antithetical copy” of marxism, replacing the class struggle with a race struggle).⁶¹ Ethno-nationalism is milder, because the struggles for national identity may be limited to territories in which nations overlap; one may (and must) have national purity in one country, even if socialism or racism know no state boundaries. Again, national sovereignty and territorial sovereignty must coincide.

Dumont, by concentrating on Hitler’s purely physical racism, ties the viciousness of national socialism directly to the specifics of the German ideology. Perhaps he, like many another anthropologist, fails to see a more general phenomenon by concentrating exclusively on the specifics of a single culture. In fact, almost all of the multinational polities of *Mittleuropa*—Croatia, Hungary, Romania and Slovakia, as well as Germany—had manifest tendencies towards fascism during World War II. All of these regions had major concentrations of minority nations but majority populations yearning to create nation-states.

The political definition of the nation-state in the modern era has been territorial sovereignty, while the political essence of the nation-state is national sovereignty. While the first may be acceptable to minority populations, the second cannot be. If Tudjman’s concept of nation as collective individual is representative of beliefs held more widely, as I believe it is, then in a nation-state of the majority minorities are foreign to the bodies politic and social. Thus for the majority to attain its primary goal of the nation state, only two choices are possible: “the territorial truncation of the state, or the expulsion of the disloyal minorities.”⁶² Essentially, this choice would require the negation of one of the two conflicting principles of international law: sanctity of borders or national self-determination. A regime that engages in “ethnic cleansing,” however, or what Tudjman views as the inevitability of programs of expulsion, extermination and conversion, may justify its actions, at least to its own people, as maintaining *both* of these principles. *Total* national sovereignty requires both inviolable borders and a homogenous population, thus making both territorial and national sovereignty coincide. With this in mind, Tudjman’s recognition of the inevitability of “final solutions” may be seen as a particularly blunt statement of central European political reality grounded in the need to overcome a basic contradiction in European social and political thought.

Constitutional nationalism manifests an attempt to reconcile two opposing concepts of sovereignty: territorial and ethno-national. Since constitutions are in the end political platforms expressed in legal terms

61. *Ibid.*, 150–51.

62. Joseph Rothschild, *East Central Europe between the Two World Wars* (Seattle: University of Washington Press, 1974), 134.

and the political essence of constitutional nationalism is the total sovereignty of the dominant nation, minorities in such a system are realistic in their assumption that the provisions asserting that they will be treated equally are unlikely to be implemented. For this reason, regimes of constitutional nationalism, despite their justification in the “right to self-determination” and their overt espousal of democracy and equality, seem likely to alienate minority populations and to produce not democracy or freedom but civil war and its consequent authoritarian politics—the tragic fate of post-socialist Yugoslavia.

Two wider conclusions also follow from this analysis, one political, the other cultural. In the political realm, if “democracy” is conceived of as requiring a polity of equal citizens, or at least as requiring the protection of minorities, ethno-national self-determination is an anti-democratic principle. Adoption of the forms of democratic constitutionalism will not suffice to create a democratic polity in a state with a sizable minority population if the minority is defined as foreign to the bodies politic and social. Since this type of exclusionary constitutional nationalist structure is increasingly common in the ex-communist states of Europe, the easy assumption that democratic liberalism has triumphed and need only be constitutionalized is, at best, wonderfully optimistic.⁶³ Instead, chauvinism often lurks under the guise of liberal constitutionalism.

In the cultural realm, the appeal of constitutional nationalism may reveal the elements of central European thought that make military or bureaucratic “ethnic cleansing,” if not genocide itself, inevitable. If this last point is true, then there is a truly bitter irony to what the Yugoslav civil war reveals about Europe. Far from “turning the dream of a united Europe into a nightmare” (as the *International Herald Tribune* put the matter⁶⁴), the constitutional nationalism of the various formerly Yugoslav republics may simply show how much the ideals of the European community ignore the nightmarish contradictions inherent in modern European social and political thought.

63. See, e.g., Bruce Ackerman, *The Future of Liberal Revolution* (New Haven: Yale University Press, 1992). To his credit, Ackerman recognizes the threat to liberalism posed by religious fundamentalism and chauvinistic nationalism. However, he fails to see that constitutionalism itself can be anti-democratic. Thus his only reference to Yugoslavia in a book on the potential “constitutional window” in Eastern Europe is in a footnote, saying that “given the terrible war raging there now, it is premature to consider the extent to which these constitutions will contribute to a lasting peace and a legitimate order in the region” (*ibid.*, 133 n. 19). It is more accurate to say that the republican constitutions that were passed in 1990 contributed to the civil war that broke out in 1991.

64. 18 May 1992: 1.