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From Equal Citizens to Unequal Groups: The Post-Yugoslav Citizenship Regimes

The break-up of Yugoslavia and its two-tier citizenship regime opened a period of continuous experimentation with defining and re-defining political communities through citizenship laws and citizenship-related practices. New citizenship regimes, in various ways, effectively turned equal citizens into members of unequal groups. In the words of Pierre Bourdieu, 'legal discourse is a creative speech that brings into existence that which it utters' (1991: 42). The main 'creative' role of citizenship laws was to bring into existence new political communities, within which the dominance of the major ethnic group would be undisputable. This group would be consolidated, often across borders, by uniting all of its members, regardless of where they resided, by the bonds of citizenship. Almost all of the successor states of the former Yugoslav federation – with some variations according to their specific contexts – have used their respective citizenship laws as an effective tool for ethnic engineering. This practice was widespread in the 1990s but, in various forms, continues until this very day. By ethnic engineering I mean an intentional policy of governments and lawmakers to influence, by legal means and related administrative practices, the ethnic composition of their populations in favour of their core ethnic group (Štiks 2006). Similar intentions have influenced the writing of most of the new constitutions. The laws on citizenship and their administrative implementation are obviously closely related and even inseparable from the practice of 'constitutional nationalism' (Hayden 1992), that is, the constitutional re-definition of new states as, in broad terms, the *national* states of their core ethnic group. Thus, ethnic engineering, in constitutional and citizenship matters, paved the way for the establishment of a series of ethnic democracies either at the state or at the sub-state level (see below).

Citizenship laws played a key role in determining the citizenry of the new states, as well as the rights guaranteed to citizens by the new state. New legislation in various ways in almost all post-Yugoslav states offered a

privileged status to members of the majority or core ethnic group regardless of their place of residence (inside or outside their borders). On the other hand, they substantially complicated the process of naturalization for those outside the ethnonational core group, especially for ethnically different citizens from other former Yugoslav republics who were permanent residents on their territory when the new citizenship regime came into effect. In their extreme manifestation, citizenship laws and practices have also been used as a subtle, but nonetheless powerful tool for ethnic cleansing. The deprivation of citizenship, and the subsequent loss of basic social and economic rights, has been quite effective in forcing a sizable number of individuals to leave their habitual places of residence and move either to 'their' kin states or abroad. The break-up of Yugoslavia and the other two multinational federations meant that millions literally went to bed as full-fledged citizens and woke up as individuals with questionable status.

The citizenship conundrum in post-socialist Europe

Between 1989 and 1993 some former socialist countries recovered their full sovereignty by exiting the Soviet bloc, whereas the others achieved full independence – some of them for the first time in history! – and all of them found it necessary to wipe out the traces of the *ancien régime* and establish themselves constitutionally as nation-states representing their ethnic majorities, despite the ethnic diversity within their borders. Many of these states frequently fell back upon the 'legal fiction of uninterrupted statehood' and on 'state-reinforcing overcompensation' (Liebich 2007: 18). Usually, the new constitutions' preambles traced the historical foundation of the state back to medieval kingdoms. The first few articles frequently confirmed the country in question as unitary, indivisible, independent and sovereign (Culic 2003). Such an eagerness to reassert its own statehood – this desire could be explained by a historic and/or current weakness and vulnerability – was also translated into the political organization of post-communist states. For instance, all new EU member states from East, Central and Southeast Europe are unitary states (Liebich 2007). In the post-communist world the only real exceptions to unitarism are Bosnia-Herzegovina (organized under the Dayton Peace Agreement as a federal union of two entities, one of which is itself a federation of cantons!) and the much more centralized Russian federation.

Constitutional re-definitions had direct impact on the citizenship legislation and practices in these countries as well. Katherine Verdery observes that 'socialist-era constitutions had placed all socialist citizens on formally equal footing, guaranteeing the rights of co-resident nationalities and providing for proportional representation of national minorities in Party organs. The collapse of socialism and of several socialist states ended these constitutional protections. In both new (post-Yugoslav and post-Soviet) states and ongoing ones (such as Albania, Romania and Hungary), the process of writing new constitutions enabled ambitious politicians to manipulate the very definition of citizenship' (1998: 294). Although post-communist constitutions usually offer all of the standard democratic rights to minorities, those minorities are generally portrayed as 'historic guests' on the territory belonging to the 'autochthonous' ethnic group that, as a rule, gives its own ethnic name to the country in question, or the dominant group adopts the regional name as its own ethnic name. The 'post-communist nation-state is, at its mildest, a state of latent discrimination. Even when official differentiation is rare, the "spirit" of the constitutions and laws signals to members of all minorities that they are inferior citizens, submitted to frequent tests of loyalty' (Dimitrijević 1998: 166–167). In other words, they 'may hold citizenship but cannot aspire to equality' (Hayden 1999: 15).

By the same token, the post-communist nation-state offers a privileged relationship to its ethnic kin abroad. In many constitutions (see, e.g., those of Hungary, Croatia and Albania) or in special laws and acts (e.g. special acts or laws on ethnic kin in Hungary in 2001, Slovakia in 2005, Slovenia in 2006, Serbia in 2009 and Croatia in 2011), one can find declarations of responsibility and duty towards ethnic co-nationals, whether abroad, overseas or in the 'near abroad' just across the border. Almost all post-communist countries provided their ethnic diaspora (including descendants up to the third generation in some cases) with access to their citizenship. These constitutional re-definitions of the state and enactments of new citizenship laws thus often created the situation in which yesterday's citizens – such as in the former multinational federations – were turned into today's aliens or second-class citizens, and yesterday's aliens (actually national minorities in neighbouring countries or descendants of those residing abroad for economic or political reasons) into lawful citizens with more rights than those living within the state's jurisdiction. Citizenship laws in some post-communist countries were also written with the intention of repairing 'past wrongs' (Liebich 2007: 27). The laws targeted ethnic diaspora members to whom citizenship rights, often for ideological reasons, had been denied during

socialism. However, we must add that this belated justice was often ethnically exclusive. Fixing 'past wrongs' done to those now abroad went hand in hand with committing 'new wrongs' to those who were at home.

This outcome was especially dramatic in the former USSR and Yugoslavia. The ethnic diaspora politics, this 'long-distance nationalism' or 'politics without accountability' (Anderson 1992), amounted to the opposite of the American revolution's famous slogan, namely to 'representation without taxation' and to 'taxation without representation' in the case where the defunct socialist federations' citizens found themselves without the citizenship of the newly independent states – a blatant example being numerous ethnic Russians in the Baltic countries, but many former Yugoslavs as well.

Citizenship – access to it and exclusion from it – became an important political battlefield in the former multinational socialist federations. The consequences of the new citizenship laws and the determination of the initial citizenry were less dramatic in the former Czechoslovakia (Barsova 2007; Gyarfsova 1995; Kusa 2007; Palous 1995) than in the former USSR and in the former Yugoslavia. Determination of initial citizenries in the Czech Republic and Slovakia was primarily made on the basis of legal continuity with the republic-level citizenships of two Czechoslovak republics that legally came into existence in 1969. The Constitutional Act of October 1968 transformed the largely unitary Czechoslovakia into a bi-national federation and each Czechoslovak citizen acquired, alongside his or her Czechoslovak federal citizenship, the citizenship of his or her republic. Following the 'divorce', the option of taking either citizenship was extended to persons having the citizenship of one republic but who resided in the other. The Czech law made this conditional upon two years of residency and of having five years with no criminal record. The latter condition targeted many Roma who held Slovak citizenship but who resided in the Czech Republic (see Iordachi 2004: 118–119; Palous 1995: 158). Initially, having dual citizenship – probably the most satisfactory solution following the dissolution of a bi-national federation – was not permitted. Later, it became possible to hold both citizenships at once, with Slovakia proving to be more flexible on the matter than the Czech Republic which generally forbids dual citizenship. In 1999 and in 2003, the Czech law on citizenship was amended to allow dual Czech and Slovak citizenship for various groups of former Czechoslovak citizens (Barasova 2007: 167–168). Eventually, in 2004 both countries joined the EU, thus making citizens of both countries European citizens, and thereby rendering the question of dual citizenship less significant.

The situation in the former USSR was quite different. In his early analysis of the 'citizenship struggles' in the former Soviet republics,¹ Rogers Brubaker (1992) distinguished between three models of citizenship policy adopted by the new successor states: the 'new state model', or a zero option model, whereby a new state defines the initial body of citizens simply by including all residents on its territory (the large majority of the former Soviet republics); the 'restored state model', by which citizenship is granted only to the lawful citizens of the inter-war independent republics and their descendants, whereas the other residents are excluded (Estonia and Latvia); and, finally, the third model as a combination of the two: both restored citizenship and inclusiveness that should satisfy general democratic standards (adopted only by Lithuania). Lithuania was also the first Soviet Republic to adopt its own republic-level law on citizenship in November 1989 (and later as an independent state in December 1991) by which it restored or reaffirmed citizenship to those who had Lithuanian citizenship prior to 1940 and to their descendants, and adopted an inclusive policy towards the non-Lithuanians then residing on its soil, namely the large Russophone population. The latter Brubaker explains by timing (the laws were adopted while Lithuania was still part of a still powerful USSR) but also because ethnic Lithuanians never feared that they would become a 'minority in their own country'.

This prospect produced great anxiety in Estonia and Latvia. The newly independent Baltic States claimed to be the successors of the inter-war independent states and not of the republics formed under the Soviet occupation. The lawful citizens were thus those who held citizenship during the inter-war period and their descendants (including those living abroad who were invited to 'return' as citizens), whereas other individuals who happened to find themselves on these territories in the interim were simply considered aliens and excluded from citizenship (Brubaker 1992: 278).²

The 'new state' model, on the other hand, was implemented in all other republics, although, as Oxana Shevel observes (2009), there is a clear difference between those that actually added various favourable provisions for coethnics (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Turkmenistan) and those that, due to internal diversity and political contestation opted for a 'civic' model (Ukraine, Russia, Azerbaijan, Georgia, Moldova, Tajikistan and Uzbekistan).

None of Brubaker's post-Soviet models can be applied to the former Yugoslav republics. The crucial difference lies in the fact that the Yugoslav republics had had their own citizenship laws and their registers of citizens since 1947–48. Therefore, they were able to claim at the moment of independence that their citizenries already existed and comprised those listed in the republican

registers. The dissolution of federal Yugoslavia and Czechoslovakia thus clearly shows the third model (the 'federal dissolution model')³ for the initial determination of citizenship after the collapse of multinational federations. It involves the automatic acquisition of citizenship of new states by all previously registered republic-level citizens, although some states additionally used residence as a basis for citizenship acquisition.

Ethnic engineering after Yugoslavia: The included, the invited, the excluded and the self-excluded

The creation of post-Yugoslav citizenries was based on four legal pillars: initial legal continuity with republican citizenship, ethnicity or facilitated naturalization for kin members abroad, naturalization of residents, i.e. citizens of other republics, and regular naturalization procedure for aliens (with a defined period of residence). Ethnic engineering was obvious in the cases of facilitated naturalization and in the naturalization process for residents (either favouring again ethnic kin already residing in the state or excluding residents of different ethnicity). The policies of ethnic engineering, including new citizenship legislation and related administrative practices, together with political activities and conflicts based on ethnic solidarity, resulted eventually in four different groups of individuals in Yugoslavia's five initial successor states (Slovenia, Croatia, Bosnia-Herzegovina, Federal Republic of Yugoslavia (FRY) and Macedonia). Previously equal Yugoslav citizens were now replaced with the included, the invited, the excluded and the self-excluded.

The included

All former republican citizens, regardless of their ethnic backgrounds, who were registered in the citizens' republican registers, were automatically transferred into new registers. Those were *the included* by a simple operation of law. Possessing the citizenship of the new state was essential when individuals requested new documents such as IDs and passports but also for maintaining previously held jobs, access to health care and property rights. The problem with the civic registers was their occasional incompleteness.

The principle of legal continuity would not have been problematic had it not left a considerable number of people in a legal limbo, among which those Yugoslav citizens who resided outside the republic whose

citizenship they possessed, whether they knew it or not, those whose parents had different republican citizenship, families where different members had different republican citizenships and, finally, those who could not establish their exact republican citizenship. An alternative approach would have been collective naturalization for these categories respecting their residence and family circumstances.

The invited

Finding themselves in a demiurgic situation to define the exact boundaries of their new political communities, and convinced that old communist republican citizenships (too civic for their taste) were not entirely responding to the ongoing ethnocentric re-definition of their states, new polities often sent an open invitation to certain individuals – ethnic kin in the ‘near abroad’, i.e. neighbouring republics and ethnic diaspora in Europe or overseas – to join their newly formed citizenry and political communities. This invitation to ethnic brethren abroad was probably inspired by the practice of some European states such as Germany, Italy or Greece. The implicit or explicit ‘right to return’ for those abroad and overseas could have been inspired by the Israeli example.

A very open invitation to citizenship was included in the new law on Croatian citizenship in 1991 (see Ragazzi and Štiks 2009) and, in view of the policies many states have adopted since the early 1990s, Croatia can be considered a Balkan pioneer in ethnocentric citizenship practices. Among those who were invited to acquire Croatian citizenship on the grounds of their Croat ethnicity, one must distinguish between three sub-categories: those ethnic Croats who resided in Croatia but who did not have its republican citizenship; those residing in the ‘near abroad’, mainly in Bosnia-Herzegovina – as the main target of the invitation – and finally, those members of the ethnic Croat diaspora in Europe or overseas (pre-Second World War, economic or post-1945 political diaspora and Croat guest workers). Since the grounds for granting citizenship to these individuals were their ethnicity, the question immediately arose as to what proves one’s Croat ethnicity. In a number of documents such as school certificates or university certificates or some other administrative forms – but not IDs and passports – citizens were asked to declare their ethnicity. Yet, Roman Catholic Church certificates were also accepted by the Ministry of the Interior as proof of someone’s ‘Croatness’. Furthermore, article 16 of the law on citizenship even provided a facilitated naturalization procedure for Croats not residing in Croatia, mostly those in Bosnia-Herzegovina. According to some

estimates, more than 1.15 million people have become naturalized Croatian citizens since 1991; up to 800,000 of these are from Bosnia-Herzegovina or previously held citizenship of Bosnia-Herzegovina, around 100,000 from Serbia and Montenegro combined and some 10,000 from Macedonia (these numbers also include a considerable number of non-Croats who somehow managed to get Croatian passports for practical purposes such as visa-free travel).⁴

Bosnia-Herzegovina, a multinational country without a core ethnic group, also issued an invitation to citizenship in the 1993 amendments to its 1992 decree on citizenship, but only to certain individuals inside its borders. It provided that all SFRY citizens residing on the territory of Bosnia-Herzegovina on 6 April 1992 – the day of its international recognition and the beginning of the war – should be automatically considered citizens of Bosnia-Herzegovina, which, coupled with the legal continuity, basically corresponded to the new state model. However, some other more problematic ‘invitations to citizenship’ were issued during the war as well. The same amendments facilitated the naturalization of those who had been actively involved in the defence forces (Muminović 1998: 79). Bosnian citizenship was granted on this basis to a limited number of foreigners (up to 2,000), mostly from Islamic countries who had fought on the Bosniak side. These problematic naturalizations also involved a certain number of Serbs from Serbia and Croatia who had acquired citizenship from the Serb entity (that had its own extremely ethnocentric citizenship regime during the war), and ethnic Bosniaks from the Sandžak region who were naturalized in the Bosniak-Croat entity (see Sarajlić 2010: 20). The Dayton Peace Agreement annulled all wartime legislation. It introduced, following a pattern familiar from socialist Yugoslavia, a two-level citizenship regime composed of the state and the entity citizenships. Unsurprisingly, similar to Yugoslavia, the debate is open as to what citizenship actually has primacy or, in other words, which political community is actually sovereign.

The FRY, formed by Serbia and Montenegro in 1992, adopted its own law on citizenship only in 1996⁵ after the wars ended in Croatia and Bosnia-Herzegovina. Individuals entitled to FRY citizenship were those in possession of the republican citizenships of Serbia and of Montenegro on 27 April 1992. A clearly problematic dimension of this law was its retroactive application (Pejić 1998). Those who were invited to hold FRY citizenship were permanent residents from other republics living in the FRY on that very day, if they did not have a foreign citizenship. In other words, when it comes to this category, the FRY retroactively applied the ‘new state model’. The apparent liberal approach of the FRY authorities towards this group must be explained by two factors.

The FRY unsuccessfully tried to portray itself as the sole legal successor of the SFRY – therefore accepting all SFRY citizens permanently residing on its territory as its citizens – but one also has to take into account that a majority of these individuals were also of Serb ethnicity. Ethnocentric migrations within Yugoslavia were a recurrent phenomenon: Zagreb attracted many Croats outside Croatia, Belgrade many Serbs outside Serbia and Montenegrs, Pristina (especially after 1974) Albanians from Macedonia and Montenegro and Sarajevo many ethnic Muslims from the Sandžak region.

However, in spite of the positioning of Belgrade as the political centre of ethnic Serbs, and not only of the FRY, the law offered to thousands of Serb refugees settled in the FRY a narrow possibility for acquisition of its citizenship. One might assume that this mistreatment of Serb refugees in Serbia and Montenegro – by contrast with the Croatian approach in treating ethnic Croats from Bosnia-Herzegovina, for instance – contradicts my claim about the general use of citizenship legislation for ethnic engineering. However, this is not entirely the case. The deliberate manipulation of the refugee problem was part of Milošević's political strategy. Without the citizenship of their republics of origin, and without the real possibility of acquiring that of the FRY, Serb refugees became the true hostages to Milošević's wartime policies and their failure in both neighbouring countries and within Serbia. Many refugees were re-directed to the multiethnic region of Vojvodina, and to a lesser degree to Kosovo and Montenegro, where they influenced to a certain degree the ethnodemographic balances (see Rava 2010). In addition to that, offering citizenship for half a million refugees from Bosnia and Croatia would have entailed voting rights for this group that by the mid-1990s mostly blamed Milošević for their sufferings and found the nationalistic rhetoric of other political parties much more appealing. Many of them, however, found ways (some less than legitimate) to obtain the citizenship of the FRY (Svilanović 1998: 244). In 2001, new amendments to the law made it easier for this group to finally acquire citizenship status.

Lastly, in Slovenia and Macedonia, which are countries with a small number of ethnic Slovene or Macedonian kin in neighbouring countries, the law also included a special provision for facilitated naturalization of ethnic Slovene and ethnic Macedonian political or economic diaspora members.

The excluded

Since legal continuity with republican citizenship was established as the rule, the group that was immediately excluded were those Yugoslav citizens

residing in republics other than their own. Their situation was often even more complicated if they were of different ethnicity to the core ethnic group of the republic where they lived. Once Yugoslavia had disappeared, these lawful citizens were, overnight, turned into aliens and, in many cases, the stateless. For the most part, they were required to follow naturalization processes reserved for aliens, requiring a certain number of years of continuous residence and certain additional tests. The Ministries of the Interior that were in charge of deciding on the validity of the applications often had no obligation to state the reasons for refusal; many reports testify to widespread discrimination against members of ethnic minorities (see Dika et al. 1998; Imeri 2006; UNHCR 1997).

The most drastic case of administrative exclusion happened in Slovenia, an ethnically homogenous country barely affected by violent conflicts. The only former Yugoslav republic to become an EU member state in 2004, Slovenia, with its functioning state apparatus, its respect for the rule of law and its successful adoption of EU legislation, has often been upheld as exemplary in protecting human rights. This image would probably remain unquestioned were it not for the case of the so-called erased. The citizenship law adopted in June 1991 provided that individuals from other republics who had had lawful residence in Slovenia on 23 December 1990 – the day of the referendum on Slovenian independence, not the day of actual independence and a year before international recognition – could become Slovenian citizens upon request within six months.⁶ The law itself becomes quite controversial when we consider that it enabled policies of ethnic engineering. One such measure was taken on 23 February 1992. On that day, according to official sources, 18,305 lawful residents – according to the European Court of Human Rights the number amounts to 25,671 – from other republics were literally erased from the civic registries in Slovenia. In the months to come, their documents (e.g. passports, driver's licenses and IDs) were invalidated. They lost all civic and social rights, jobs, health care and social benefits, and became 'dead' from an administrative point of view – they were *izbrisani*, i.e. erased. This was facilitated by a short application period of six months, confusing procedures, numerous difficulties in obtaining all necessary documents at the moment of Yugoslavia's break-up and subsequent escalation of violence, and finally by the overall political confusion since Slovenia was still legally part of the SFRY and was not internationally recognized until January 1992 (Deželan 2013; Medved 2007).⁷

In war-affected Croatia, together with residents from other republics (non-Croats, mostly ethnic Serbs) who were struggling to resolve their citizenship

status in new Croatia, the most significant problems concerned the status of Serbs living in the breakaway Krajina region. Serb militias, acting in concert with the disintegrating federal army, took control of one-third of Croatia's territory during 1991. Their rebellion or self-exclusion (see below) from the Croatian legal framework was followed by exclusionary practices after the Croatian government retook control of these areas during two blitzkrieg operations in Western Slavonia and Krajina in 1995 (Eastern Slavonia was peacefully reintegrated into Croatia in January 1998). The majority of Croatian Serbs from these regions left or were forced to leave their homes and their property was damaged or occupied by Croat refugees or local Croats. The Tudjman government did everything to prevent their return to Croatia. They were all still legally Croatian citizens, but – since so many of them were refugees outside Croatia, in Serbia and Bosnia-Herzegovina and could not re-enter Croatia – they could not obtain the certificate of Croatian citizenship (*domovnica*) and therefore could not re-claim full citizenship rights (see the report on Croatia in Imeri 2006: 129–131; also Koska 2013). However, after Tudjman's death and subsequent political changes in 2000, and during Croatia's bid for EU membership, this group of Croatian Serbs for the most part regained their citizenship status.

In Macedonia, one provision of the first law on citizenship from 1992 considering residents from other Yugoslav republics proved that Macedonian legislators at the time were also preoccupied with ethnic engineering. The provision affirms that a permanent resident must live continuously in Macedonia for no less than fifteen years. This affected all residents from other republics, but it was clear that one particular group had been targeted: ethnic Albanians who had moved to Macedonia during socialist Yugoslavia and were thus numerically reinforcing the relative size of the Albanian minority. Albanians complained that the new Constitution rendered them second-class citizens and that the law on citizenship purposefully excluded a considerable number of ethnic Albanians (see Spaskovska 2013).

In the FRY, or more precisely in Serbia, the politics of exclusion took on a different, political and not legal shape, and were mostly concentrated in one particular region, Kosovo. Although ethnic Albanians continued to be Serbian and thus FRY citizens, the province of Kosovo, in the period between Serbia's revocation of Kosovo's autonomous status in 1989 and the expulsion of Albanians from state institutions, to the 1999 NATO intervention, was a place of continuous violations of their citizenship rights (see Krasniqi 2013a). Under Serbian administrative, military and police rule, this group of Yugoslav citizens was deprived of political and many civil rights. Ethnic Albanians often

had problems not only with registering in the citizens' register, but also with obtaining travel documents and re-entering the country.

The self-excluded

Self-exclusion from existing citizenship status (of one's own republic) – with the idea of forming one's own ethnically based state and/or joining the kin state and its citizenship – was, as I showed in the previous chapters, part and parcel of the Serb rebellions in Croatia and Bosnia-Herzegovina and the Bosnian Croats' political strategy in 1993 and 1994. Already in August 1990 – three months after Tudjman's nationalist party took power in Croatia – the roads leading from Zagreb to the Dalmatian coast were blocked in the Serb-populated area and Serb police officers refused to commit their loyalty to the Croatian Ministry of the Interior as well as to wear new uniforms decorated with Croatian insignia. In October of the same year, the Serb autonomous region of Krajina was declared; local Serb leaders openly advocated that, in case of Yugoslavia's disintegration, Yugoslav Serbs should unite in a greater Serbian state regardless of the actual republican borders. In March 1991, what would become known as Krajina declared independence from Croatia.

A similar scenario occurred in Bosnia-Herzegovina. The mobilization of Bosnian Serbs for war was also motivated by the prospect of changing internal Yugoslav borders and joining a new, larger Serb entity. With the Dayton Peace agreement the territories under their control as well as the population in these territories would be re-integrated into the Bosnian citizenry. In a similar fashion, nationalist Croats in Bosnia-Herzegovina established their own statelet, the Croatian Republic of Herzeg-Bosna. In 1994, after the signing of the Washington agreement with the Bosnian government, they re-joined the state institutions.

One needs to mention another self-exclusionary practice, namely peaceful rebellion – until the emergence of the Kosovo Liberation Army in 1997 – of Albanians in Kosovo against the Serbian authorities.⁸ Local Albanians judged Serbia's presence in Kosovo to be illegitimate after the unilateral revocation of Kosovo's autonomy and the waves of political repression against Albanians. Albanians opted for a boycott of the Serbian state and the construction of parallel political community, society and institutions. Eventually, the self-exclusionary practices failed in all but the case of the Kosovo Albanians. Thanks to the international intervention, they got rid of Serbian rule, formed their own

institutions and established an independent citizenship regime in Kosovo and, after 2008, gained partial international recognition.

Epilogue: The citizens, the metics and the aliens

One could safely conclude that the implementation of the new citizenship laws in the former Yugoslav states was marked by 'confusion and arbitrariness' (Pejić 1998: 173). Nevertheless, this confusion was only partly the product of an unstable political context. In the majority of cases, the governments involved in the conflict created confusion intentionally. Arbitrariness could be found in many of the legal prescriptions and actual administrative practices, and was clearly part of a general strategy of creating ethnically re-designed states – a strategy that often called existing borders into question – in favour of a given ethnic majority.

The citizenship laws and the procedures for acquiring new citizenship proved to be the main weapon of administrative ethnic engineering. The targeted populations were usually comprised of individuals living in republics other than their 'own', especially if they numerically reinforced a domestic ethnic minority (perceived as not sufficiently 'loyal' to the new state), or were simply of a different ethnic origin. Citizenship laws provided an opportunity to eliminate a certain number of citizens from the political, social and economic life of the new states. They were useful tools for the modification of ethnic balances and social and ethnic structures. The new aliens saw their rights reduced and their residency threatened, which proved to be a powerful means of forcing them out of their homes and usually out of the country, without employing physical violence and thus avoiding condemnation by international bodies or human rights agencies.

In general, we could conclude that the dissolution of a multinational federation and the common efforts by successor states to define their citizenry deprived a huge number of individuals of their previous status as lawful citizens. Rogers Brubaker's description of the internal Soviet migrants in the post-Soviet period is equally valid for many former Yugoslavs: 'The breakup of the Soviet Union has transformed yesterday's internal migrants, secure in their Soviet citizenship, into today's international migrants of contested legitimacy and uncertain membership' (1992: 269). When this break-up was followed by a violent conflict, it also resulted in massive migrations and in millions of refugees and internally displaced persons. Citizens *à part entière* are thus transformed into *metics*, authorized residents with limited rights or illegal

aliens. Of relevance here is Michael Walzer's analysis of the status of *metics* in Western Europe and in North America as residents who, like *metics* from ancient Greece, are not citizens: 'They are ruled, like the Athenian Metics, by a band of citizens-tyrants' (1983: 58). In post-Yugoslav states, the major difference is that, unlike the *metics* in the ancient Greek *polis* that had never had the privileged position of citizens or immigrants today, the post-Yugoslav *metics* and *aliens* used to be *citizens* enjoying full citizenship rights in their places of residence. The former citizens became either legal alien residents or obtained only temporary visas, without a clear indication of whether they would ever regain the status of citizens, and lived with a potential threat of deportation, or they were simply transformed into illegal aliens such as the erased in Slovenia and thus subject to immediate expulsion.

Classical citizenship entails a bipolar relationship between citizens and aliens, whereas citizenship in a federation is characterized by a triangular relationship between citizens of the member states, citizens of the federation and aliens (Béaud 2002: 317–318). This triangular relationship might be called the *federal citizenship contract*. It consists of offering equal rights to all federal citizens over the whole federation's territory, regardless of their sub-state citizenship (the citizenship of a constitutive part, if legally provided). In the case of the dissolution of the Yugoslav federation and in some ex-Soviet countries, the successor states broke the existing federal citizenship contract and adopted the classical citizenship contract that distinguishes only between nationals and aliens, a direct consequence of which was the transformation of vast numbers of lawful citizens into *metics* or aliens – legal or illegal residents with no right to the status of citizen or subject to overly complicated procedures for acquiring it – as if the previous federal citizenship contract had never existed.

To a huge number of individuals in the former Yugoslavia that experienced the fate of *metics* and *aliens*, we should add refugees as well. After fleeing from their republic of origin, they often found themselves in the territory of another republic with, in most cases, no right to its citizenship (even after several years) and with no possibility to renew their citizenship status in their republic of origin. To make the whole situation even more complicated, their republic of origin was more often than not in open conflict with the republic in which they found shelter. It was not until the late 1990s and after 2000 that the situation generally began to improve, with many aliens being turned into *metics* and *metics* slowly reacquiring their *droit de cité*, and with yesterday's enemies gradually being transformed into neighbours.

Enemies into neighbours: Unconsolidated and overlapping citizenship regimes

Since 2000, multiple changes and reforms of the citizenship policies and citizenship-related administrative practices – both improvements and regressions – have been introduced in post-Yugoslav states. The matter is even more complicated by the fact that we have since seen another disintegration (of Serbia and Montenegro in 2006) and secession (of Kosovo from Serbia in 2008), the result being three new states with three new independent citizenship regimes. Some problems similar to those from the 1990s thus arose again.

In the former northwestern Yugoslav republics of Slovenia and Croatia (that already joined the EU), citizenship laws and regulations have not been profoundly modified since independence. It took more than twenty years for Slovenia to face the problems of the ‘erased’ and to accept full responsibility for such an act. In Croatia, one of the most important conditions for joining the EU was the return of Serb refugees and the full restitution of their civil status and the reparation of their material goods. The actual practice of managing citizenship has demonstrated a greater degree of inclusiveness due mostly to the change in political climate. To sum up, inclusiveness and generally fair treatment of minorities are here combined with the preservation of a trans-border ethnic Croat community tied together by the bonds of citizenship (Ragazzi, Štiks and Koska 2013).⁹

On the other hand, considerable changes in legislation and administrative practices have occurred in the former southeastern Yugoslav republics, post-conflict Macedonia and in the newly independent states of Serbia, Montenegro and Kosovo. By signing the Ohrid Framework Agreement in August 2001, ethnic Macedonian and Albanian parties committed themselves to a multiethnic Macedonia in order to end the Albanian rebellion. Albanian demands for a reform of both the Constitution (in 2001) and, subsequently, the Citizenship Law (in 2004) were also met. Macedonia was re-defined as a ‘*civic* and democratic state’ [emphasis added] (Constitution of the Republic of Macedonia 2001). The Albanian language was recognized as an official language in the majority Albanian areas, and the greater representation of ethnic Albanians in the state sector was affirmed. Finally, in early 2004, Parliament adopted a new law on citizenship that reduced the controversial residence requirement from fifteen to eight years.

In 2004, the Serbian National Assembly also adopted a new law on Serbian citizenship that annulled both the old one (1979/1983) and the law on FRY

citizenship. The main characteristic of the 2004 law is the invitation to acquire Serbian citizenship given to ethnic Serbs and members of the Serb diaspora. After Montenegro's declaration of independence, Serbia automatically and unwillingly became an independent state as well. This provided a good opportunity for a new exercise in 'constitutional nationalism'. The new Constitution re-defines Serbia as 'the state of the Serbian people and of all citizens living in it' (Constitution of the Republic of Serbia 2006). This ethnocentric definition – again similar to the Croatian constitution – directly affected the law on Serbian citizenship that was further amended in September 2007 (see Vasiljević 2013). It confirmed that the road was open for ethnic Serbs from the former SFRY and abroad to acquire Serbian citizenship without the residency requirement, provided they sign a written declaration that they 'consider Serbia to be their country'. The 2007 law has also smoothed the way for Montenegrin citizens living in Serbia to acquire Serbian citizenship.

This move provoked an angry reaction from Montenegro, which feared Serbia's influence on a large number of its citizens. Montenegro reiterated that it would not allow its citizens to hold dual citizenship and that those citizens violating the law would be stripped of their Montenegrin citizenship. As early as 1999, in preparation for eventual independence, Montenegro adopted its own law on citizenship, in which primacy over (and an open defiance of) the existing federal citizenship was clearly stated. Montenegro as a now sovereign and again internationally recognized state adopted a new Constitution on 19 October 2007. Its first article defines Montenegro as a '*civic, democratic, and ecological country*' (Constitution of Montenegro 2007, emphasis added). After many debates and delays, the Montenegrin parliament adopted a new law on Montenegrin citizenship in early 2008. The law, as with the Constitution, states in its first article that Montenegrin citizenship is 'the legal tie between a person and the Republic of Montenegro and *does not imply national or ethnic origin*' [emphasis added]. The law forbids dual citizenship, which, given the size of the Serb minority (28 per cent according to the 2011 census) as well as many Montenegrins residing in Serbia, has been a source of continuous tension between these states (see Džankić 2013).

In Serbia and Montenegro, the laws on citizenship were once more used as a way to sustain and promote the demographic superiority of a core ethnic group and – in contexts where ethnic origin often determines one's political preferences as well such as in Montenegro – as a means of reinforcing a particular political position. In the Montenegrin case, we see, however, a novel approach. Since ethnic Montenegrins are numerically the largest (45 per cent) but not

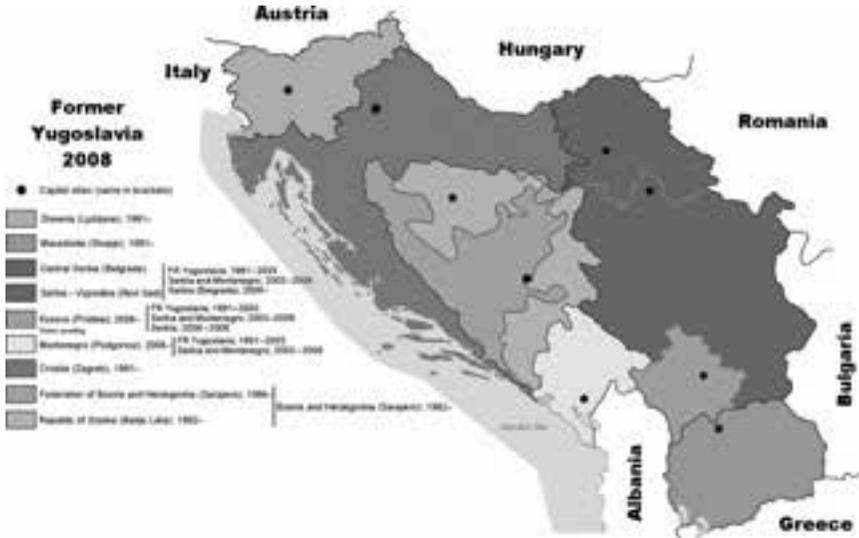


Figure 9.1 The post-Yugoslav states since 2008 (Source: Wikimedia Commons)¹⁰.

the majority group in Montenegro, insistence on the civic nature of the state and its citizenship could be interpreted as a measure to reinforce Montenegro's independent statehood – narrowly achieved in the referendum in 2006 – which still deeply polarizes its citizens along ethnic lines.

'Newborn' Kosovo declared independence in February 2008, and its new Constitution came into effect on 15 June 2008 following the basic lines of the Ahtisaari plan for Kosovo's 'supervised independence'. Its first article defines Kosovo as 'a state of its citizens' that 'shall have no territorial claims against and shall seek no union with, any State or part of any State' (Constitution of the Republic of Kosovo 2008). On the same date the law on Kosovo citizenship came into effect. The law extended Kosovo citizenship to all citizens of FRY who had 'habitual residence' in Kosovo on 1 January 1998. However, a new example of self-exclusion immediately appeared. Kosovo Serbs largely refused to accept Kosovo as an independent state with its own authorities and they have been building their own 'parallel institutions' in Serb-majority zones in North Kosovo that has been, after the 2013 agreement between Serbia and Kosovo, slowly becoming part of the new state, although under a special political and citizenship regime (see Krasniqi 2013a, 2013b).

Since 2000, we have generally witnessed greater inclusiveness and less discrimination on ethnic grounds, as well as increased sensitivity to the political aspirations of ethnic minorities (e.g. in Macedonia and Croatia). Montenegro,

on the other hand, shows how even the civic definition of citizenship, although favoured by the EU, can be deeply divisive when combined with intolerance towards dual citizenship, which in the particular Montenegrin context has the effect of reinforcing the core ethnic group even though it does not have a majority of the population. The Kosovo case shows that the carefully worded citizenship law, with a high degree of inclusiveness, does not help if one community (namely, Kosovo Serbs) wishes to remain part of the Serbian citizenship regime and rejects, together with Serbia, Kosovo's secession. After all, calling your state *civic*, and at the same time insisting on its multiethnic composition and representation and protection of smaller groups (Krasniqi 2013b), becomes practically irrelevant when the majority group represents almost 90 per cent of the entire population.

This brief overview also shows something else: one could see that the citizenship practices of Yugoslavia's successor states within the context of eventual EU enlargement are used both as tools of reconciliation and of fostering divisions among neighbours. More inclusive citizenship policies, coupled with political inclusiveness, definitely play a role in the reconciliation process in Croatia and Macedonia and are intended to promote reconciliation in Kosovo. In Bosnia-Herzegovina, the two-tier system of citizenship at least provides common ground for equality of all citizens. On the other hand, one can see that ethnocentric practices of granting citizenship to ethnic kin in neighbouring countries (practiced by Croatia and Serbia) are sources of new divisions and blurred loyalties in Bosnia-Herzegovina and Montenegro. Serbia considers citizens in Kosovo to be Serbian citizens (although its activities in reality are mostly directed towards the Serb minority and effectively ignore Albanians), whereas Kosovo and the international institutions try to get as many Kosovo Serbs to accept and take part in Kosovo citizenship as well.

Obviously, 'citizenship struggles' continue in what used to be Yugoslavia and what is today a landscape of increasingly overlapping citizenship regimes and their political communities. The picture gets even more complex with the division of this region between *the included* in and the *excluded* from the supranational membership of the EU.

Concluding remarks: From ethnic engineering to ethnic democracies

Democratization in Eastern Europe, and especially in the former socialist multinational federations, demonstrates that the rules of democracy including, among other elements, a solidified state, a defined territory and majority rule,

are understood more often than not in ethnic terms. This in itself is unsurprising given that the majority of these states were formed as the ethnic homelands of their core ethnic groups and, in the post-socialist period, had free rein to impose their dominance over minority groups and individuals not fitting the criteria of ethnic membership.

At the end of the communist era, these states perceived themselves as 'nationalizing states'; that is states in the process of becoming full-fledged nation-states (Brubaker 1996: 63). Liberal democracy was considered crucial in their attempts at national liberation from foreign tutelage or multinational unions. Democracy itself legitimized the dominance of the core ethnic groups and created, in almost all of these states, multiple memberships within a single citizenship regime: citizenship as membership is overshadowed by ethnic membership or dominance by the core ethnic group that, constitutionally codified or not, 'owns' the state. These dominant groups therefore set about completing the revolution for national self-determination by aiming to create a nation-state of a given majority ethnicity or, failing to secure numerical dominance, a state with the given ethnicity as the core ethnic group. Constitutions and citizenship laws were critical tools for their success. They championed divisions among citizens along ethnic lines as the primary category of identification. These strategies inevitably created favourable conditions for conflict in the context of ethnic diversity and competing claims over territory.

This chapter shows how crucial citizenship policies and ethnic engineering were for creating, after socialism, a series of state-level or sub-state-level ethnic democracies. Sammy Smooha defines ethnic democracy as a democratic political system that combines the extension of civil and political rights to permanent residents who wish to be citizens with the bestowal of a favoured status on the majority group. This is democracy that contains the non-democratic institutionalization of dominance of one ethnic group. The founding rule of this regime is an inherent contradiction between two principles – civil and political rights for all and structural subordination of the minority to the majority. The 'democratic principle' provides equality between all citizens and members of society, while the 'ethnic principle' establishes explicit ethnic inequality, preference and dominance (Smooha 2005a: 21).

Smooha based his model on the case of Israel in its internationally recognized pre-1967 borders and compares ethnic democracy with the classic liberal model and consociational democracy. Confronted with the experience of the post-communist period Smooha offered a revised model of ethnic democracy (see 2005b). Some of the features of ethnic democracy according to this revised model are therefore ethnic ascendancy, perceived threats and diminished

democracy. The only reasons for introducing democracy at all, Smooha argues, lie in the ethnonationalist drive of the majority and its belief in democratic values, political considerations both domestic and international, its quest for legitimacy and its calculation of democracy's utility. A strong state, a stable numerical and political majority and a small and manageable minority assure the viability of an ethnic democracy. It is crucial for the viability of this type of democracy that the majority continues to perceive threats and that the external homeland and international community do not intervene. Ethnic democracy entails a privileged position for the ethnic majority; this majority uses the state for its own political, social, cultural and economic benefits. However to qualify as an ethnic *democracy*, Smooha warns, a state must guarantee minimal minority rights as well as the rule of law.

Many post-communist countries obviously only half-implemented the model. They found the ethnic dominance of the core group an attractive proposition in addition to liberal democracy but often failed to fulfil the democratic criteria when dealing with their minorities. This led to widespread discrimination, restrictions in citizenship rights and in some instances violence. For Smooha, many post-communist countries failed to establish ethnic democracy 'because they lacked a strong state and a good measure of democracy', and did not provide benefits for their minorities to guarantee the acceptance of ethnic democracy (2005b: 257). Although I acknowledge the applicability of the ethnic democracy model in Eastern Europe, it does not help us to understand the link between ethnic democracy and the attempts at territorial expansion. Smooha's model presupposes defined borders, hence his insistence on Israel in its pre-1967 boundaries. Israel's expansion here differs from the situation in Eastern Europe: it was meant to conquer territories – understood as being part of a Biblical Jewish state – in order to settle Jewish migrants there, whereas in many Eastern European cases, ethnic democratic state was seen as incomplete if it did not include the territories already inhabited by co-ethnics in neighbouring countries. The stateness, on the other hand, was seen as threatened if ethnic minority was not 'small and manageable'.

When it comes to the post-Yugoslav states, this was certainly the case in the 1990s. However, after the conflicts and in the 2000s, it seems that these states satisfy the general criteria suggested by Smooha, while the use of internal and external 'threats' varies according to a given context. This happens even if they define themselves as being civic, which often hides the dominance of the core ethnic group, or multiethnic. In the situation of recognized multiethnic composition followed by the introduction of consociational rules, ethnic

democracy is mostly practised at the sub-state level as in Bosnia-Herzegovina (entities and cantons), Kosovo (special statuses for Serb municipalities) and Macedonia (municipal level). Furthermore, ethnic democracies are complemented by ethnocentric citizenship policies in the majority of states in Southeast Europe. In the absence of the classic territorial expansion, expansion of citizenship succeeds in bringing under the same citizenship regime ethnic kin abroad and in the near abroad and thus further empowers ethnic membership and solidarity.

