

Yugoslavia

Morgan Cloud

THE BELGRADE STREETS were still crowded with workers, shoppers, and students, but the square was nearly empty. We seemed to be the only ones using it as a short cut through the old downtown. To our left, several women sat in the sun. At the far corner, three young men – old children, really – managed to lounge yet stand erect in their drab army uniforms made of wool much too heavy for the warm morning sun. Had the square been full of people we might not have noticed the folksinger selling his tapes. But no crowd blocked our view or drowned out his music, and we still had time to get to my first appointment. So we angled across the square to get a better look, and to hear his music.

He sat alone on a folding chair next to a small table on which he had stacked copies of the tape that was playing on a boombox. A cardboard sign listed the price of the tapes in dinars. Like the boy soldiers, his clothes seemed too drab and bulky for a sunny April morning. His beard and hair were shaggy and dark, but his music was darker. Tibor trans-

lated for me. I have been unable to forget two of the recurring lines of the first song we heard: “The whole world is against Serbia, so we must fight; the whole world attacks Serbia, so we must win ...”

It was 1991. Serbia was not yet at war in Croatia, not yet at war in Bosnia, not yet at war in Kosovo, was not yet the object of international concern. After Tibor had finished translating the patriot’s song, I blurted out, “Most of the world doesn’t care about Serbia at all.” Then I added, “But it will if this is how the Serbs view the world.” The singer’s lyrics expressed such a misunderstanding – no, such an extreme exaggeration – of his people’s place in the scheme of nations *at that time*, that now, almost a decade later, his song still symbolizes for me the self-centered, self-pitying, self-aggrandizing world view that is so inexplicable to outsiders but which has played so important a role in the irrational violence Yugoslavia’s people have wreaked upon one another.

I had only been in Yugoslavia a few days, but nothing in my background – not all of the books and articles I had read, not all of the

Morgan Cloud is a Professor of Law at Emory University.

people I had interviewed, not even living my life in a racially divided country – had prepared me for the emotional reality of the ethnic¹ divide in the Yugoslavia that had survived for a decade after Tito's death.

I was in Yugoslavia to lecture about federalism, a topic of interest to legal scholars living in a federation so structurally complex that its constitution ran on to nearly 180 pages, and to do field research. My research focused on identifying changes to the Yugoslav legal system that might forestall civil war by promoting law-based dispute resolution. Events soon made this project irrelevant.

My appointment that morning was with the leaders of one of the many pro-democracy groups that had sprung up in central Europe in the heady months after the fall of the Berlin Wall. The organization was part think tank, part activist, and entirely paranoid about the Milosevic government. The first thing they said – before they let me say anything more than hello – was that I should expect that our conversation was being electronically monitored. As they complained about government control of the media, about government disruption of their election efforts, about government suppression of free speech, about their fears of the repression that would surely attend the impending war, I thought of the old joke that even paranoids have enemies. In the days that followed, it became apparent that their paranoia was in fact realistic, and accurate.

When I asked them about the possibility of obtaining help from the judicial system, I got the same response that these questions produced everywhere I went in Yugoslavia: It would be futile to pursue justice in the courts.

Not that Yugoslavia lacked a legal system. It graduated lawyers from law schools in Belgrade, Zagreb, Novi Sad, and elsewhere. The faculties of law were burdened, of course, with Party hacks, but also were blessed with brilliant and sometimes courageous scholars. Like attorneys in western democracies, Yugoslav lawyers represented clients in land and contract disputes, drafted wills, handled criminal cases.

But no one I talked with that morning, or any other morning I spent in Yugoslavia, believed that the country's judicial system was a neutral place to seek justice. No Croat in a dispute with a Serb would trust the justice dispensed in a Serbian court. No Serb would trust the justice she would receive in a court in Croatia.

But the Yugoslav judiciary's shortcomings ran deeper than its incapacity to deliver neutral justice to members of minority groups. I was told repeatedly that the judicial system was "irrelevant" to the pursuit of political freedom, social equality, and individual rights. Academics and politicians in Belgrade, Zagreb, and Novi Sad all told me that to be a judge was unimportant. It was much more important to be in parliament to make laws. Judges were political appointees, and for nearly half a century had been influenced by political considerations. The most extreme complaints were that these politically appointed judges obeyed directions from the Party bosses. The consensus was that neither the office nor the people who occupied the position of judge in Yugoslavia commanded respect from the people.

During a lecture about federalism I delivered to the Faculty of Law at the University in Novi Sad, I was peppered with questions

1 In Yugoslavia, it would be more accepted to use the word nation and its variations, rather than the term ethnic and its variations, to describe these historically defined population groups. The conflict between Serbs and Croats, for example, would be described as a conflict between the Serb and Croat nations, rather than a conflict between ethnic groups. Here I will use the terms ethnic and nation interchangeably.



about “this judicial review.” What is it? How does it work? Why would any politician obey the decisions of judges? How were judicial decisions enforced? Perceptive questions about a foreign concept in a land where for nearly half a century the most reliable way to obtain favorable treatment in a “legal” dispute was not within the judicial system; it was within the Communist Party. I was told repeatedly – by Serbs and Croats, by Albanians and Hungarians, by lawyers and laymen – that victory in an important dispute likely went to the adversary who secured help from the person highest in the Party hierarchy.

And there was always the background issue of national identity. After Tito’s death in 1980, members of ethnic minority groups (Serbs in Croatia, Croats in Serbia, for example) felt even more vulnerable than they had during his decades as dictator. For thirty-five years Tito had used his power as leader of the Communist Party and the government to suppress Yugoslavia’s explosive ethnic passions, but with his death in 1980 the Party and the national government began to lose control over the patchwork of republics, autonomous regions, and peoples jerry-rigged together in 1918 to create a new country, largely from remnants of the Austro-Hungarian Empire.²

The leaders who emerged from the post-Tito Communist Party, particularly Serbia’s Slobodan Milosevic and Croatia’s Franjo Tudjman, built their careers by appealing to the nationalism of their respective ethnic groups, not by promoting the interests of all Yugoslavs. Whatever had been the quality of justice produced by the Party-dominated legal system before 1980, by 1991 no one seemed to have any faith in the judicial system.

I met with a senior member of the Faculty of Law at the University of Belgrade.³ When I arrived at his office, he was trying to console a distraught colleague who was certain that she would be arrested during the upcoming May Day holiday. She had been a rather “high profile” proponent of democratic elections and assumed that the issue was not whether she would be arrested, but when. We had a coffee, thick and strong by any standards. Whether it was the coffee or the presence of an unknown foreigner, she became calmer, and decided to leave. Before we could continue our conversation, the professor I had come to interview warned me that we should talk elsewhere, for his office was undoubtedly being electronically monitored.

He too had been active in a pro-democracy political party, and had publicly advocated press freedom during elections. He acknowledged that opposition parties had been allowed some access to the print media, but complained bitterly that the Milosevic government had prevented television and radio coverage of the insurgent pro-democracy parties, dooming their efforts to reach large numbers of people.

And this was the least of his worries. He was a Serb, but had no illusions about the treatment he would receive in the Serbian justice system. He was fatalistic, but not suicidal. Over lunch he said, with a quiet sadness, that he did not flee because it was his country and besides, he was too old to try to start an academic career in another land. He was certain war would produce even more repressive acts by the Milosevic government, but he would stay, and wait, and hope.

2 I have been told that Yugoslav newspapers continued to print Tito’s picture on the front page for months after his death in the hope that the display of the most powerful symbol of Yugoslav unity would somehow forestall the chaos to come.

3 No good can come from mentioning the names of people still living in Yugoslavia, so they will remain unnamed.

War between Serbs and Croats was inevitable. War between Serbs and Albanians in Kosovo was inevitable. War among the Serbs, Croats, and Muslims in Bosnia was probable. And the most immediate war might well be with the Slovenes, who obviously were preparing to try to withdraw from Yugoslavia and create a future as Western Europeans. The only question was which war would come first – and whether those who opposed the Milosevic government would survive.

We talked as we walked the streets of Belgrade. Young men in uniform were everywhere. Eventually he drove me to the bus station. As we sat at a long traffic light waiting for the color to change, I found myself staring across the intersection at Belgrade's first McDonald's, its Golden Arches a splash of capitalist yellow conspicuous against the socialist grey facades of Belgrade. Whatever their original colors, Belgrade's buildings now wore a uniform and oppressive grey epidermis laid by soot expelled for decades from the primitive motor vehicles produced in the factories of Yugoslavia, East Germany, and the Soviet Union.

My eyes drifted to the crush of afternoon pedestrians waiting next to us at the curb, and for a moment I found myself staring at the one person who stood out from the crowd. She was dark-skinned, perhaps Asian, perhaps from the South Pacific, but she was dark. And in that moment I realized that I was staring at her because everyone around her looked the same. Not identical, but the same. I was looking at a crowd of people and could not possibly tell by looking at them who was a Serb, who was a Croat, who was a Muslim, who was a Slovene, who was a Hungarian. It wasn't just that I was a foreigner. I had already learned that even the most nationalistic of Yugoslavs would have to discover the facts of a neighbor's personal history before they could determine to which of these groups she belonged. There

was simply no way to tell who belonged to which of the "different" nationalities by looking at the people of Belgrade. The ethnic hatreds that would soon tear Yugoslavia apart could not be explained or justified by relying upon observable external "racial" characteristics like skin color. Yugoslavia was – even by name – the land of Slavs, whose ancestors had both fought and coexisted for half a millennium or longer. It was true that many Yugoslavs had clung to the characteristics that distinguished them. Religion has been the most commonly cited example of divisions among these people. It was true that Croats and Hungarians who were religious tended to be Roman Catholic, Serbs often were Serb Orthodox, and Albanians typically were Muslim. But these also were peoples who had lived as neighbors, had married one another, had borne children who were complex blends of Serb, Croat, Muslim, and Hungarian, and who – at least from the outside – were more alike than they were different.

To one raised in the divided world of black and white and brown and yellow, this was profoundly unsettling. Yugoslavia's ethnic hatreds rested on beliefs about the differences among people that were internalized so deeply that they trumped the external realities of life. The process of dehumanizing people to the point that "ethnic cleansing" can be justified as a means of achieving justice is always madness. Before me stood the visual proof that Yugoslavia's bigots were succeeding at dehumanizing the people most like them in the entire world. It was at that moment that I began to lose hope for the future of Yugoslavia.



A few days later Tibor drove me from Novi Sad, where I had been staying, to Ruma, a small country town, where I would catch the train to Zagreb. It was another perfect spring morning, the air warm and soft with humidity,

the sun glistening on the moist leaves and grass. The car windows were open, and we could hear birds singing. Our route took us within a few kilometers of the village in eastern Croatia where, as we passed nearby, a Serb "militia" group was slaughtering a force of Croat "police officers" it had ambushed, but we did not hear the gunshots.

We were worrying, instead, about Kosovo, site of the fourteenth century battle in which Turks conquered the Serbs, a defeat that for 600 years had shaped the collective Serb psyche. Even in 1991, Kosovo's Albanian majority (at least ninety percent of the region's population) was restive. The Serb authorities expressed a distrust of and dislike for Albanians that was less than subtle. Tibor laughed as he described a recent incident in which pollutants had been dumped illegally into one of Belgrade's already murky rivers. The mess was so foul that it had provoked a public outcry and an official investigation. In one of its stories describing the investigation, a government-dominated daily newspaper had reported: "It has not yet been proven that the Albanians did it." I laughed, too, accepting that whatever had happened, the official investigation eventually would prove that "the Albanians" were to blame.

The train was almost on time. It had started its trip in Belgrade and most of the first class compartments were already full. Near the end of the first class car I found a compartment with an empty middle seat. On my right was a young woman, college-age at most, blotting out the rest of us by closing her eyes and playing American rock and roll so loudly on her Walkman that I could understand the lyrics blasting through her headphones.

On my left sat a thick middle-aged man. When he left the compartment the man sitting across from me jokingly called him the "Commissar," and the label was perfect. His thick black hair was greased straight back over his head; his ill-fitting brown, chalk-striped suit

was inspired more by Soviet military fashion than by Milan. He chain smoked until he left the train somewhere before Zagreb, lighting each cigarette with the stub of its predecessor. The compartment was marked as non-smoking (a remarkable event in central Europe), but the brutish hostility he exuded ensured that no one – including the railroad employees who occasionally inspected our compartment – mentioned this annoying fact to him. He could have been the model for a Cold War British political cartoon lampooning the Brezhnev era Politburo.

Three people sat on the bench facing me. A short, dark-haired young man sat next to the window. When we talked, I learned that he was an Albanian who worked for the railroad, and was on his way back to work after a brief vacation with his family in Kosovo. A tall, blonde-haired man sat in the middle seat. Next to him sat a woman, and with a start I realized that she had to be the same woman I had stared at a few days earlier at the crowded Belgrade intersection. It wasn't just her hair, or skin color. I recognized *her*. Those moments of looking at her had so crystallized my thoughts and fears about this country that I could not have forgotten her face in a matter of days. I tried not to say anything, but I had to find out. I apologized for being so inquisitive, then asked if she had been at that intersection, on that day, at that time. She had.

The coincidence was so interesting that we began to talk. She said she was a businesswoman from Singapore, on vacation with her husband, the blonde American sitting next to her. He said he was a freelance journalist who had quit his job with an international news service and was now traveling in the former Soviet bloc. They had been in Moscow for six months, but recently had decided to visit Belgrade and Zagreb. Her explanation of how she could abandon her factories in Indonesia for more than six months didn't make any sense. He was "freelancing" as a journalist, but

he hadn't written any stories yet; in fact, he wasn't working on any stories or books or shopping any ideas to any publications.

Their story sounded a bit suspicious even to me, the naïve American professor, and I would have loved to have known what the Commissar thought about it – although he gave no indication that he understood English. It was probably just as well. The couple agreed that Moscow was in bad shape, but they were shocked by their weeks in Belgrade. Both offered that the ethnic divisions in Yugoslavia were so palpably explosive that they didn't see how war could be avoided. News had not yet reached us, foreign travelers isolated on a train, that the battle between Serb militia and Croat police that would help ignite the Serbo-Croatian war was being fought while we talked.



A few days later I took a cab ride at dusk into the hills above Zagreb's old city to meet with a professor who had just returned from New York after completing a tour with some part of the U.N. bureaucracy. Armed police squads patrolled every corner and intersection in his neighborhood. My cab driver explained that they were there to protect the Croat Minister of Defense, who lived in the area. He had been charged by the national government (now controlled by Milosevic) with illegally buying weapons from Hungary to arm the Croat "police" for war with the Yugoslav army (now also controlled by the Serb leaders of the national government, and run by generals who had come to power under the Communist regime). The Croat government did little to hide the fact that it was in fact arming for war, and years later, the same Croat Minister proudly described his clandestine trips to Hungary to secure weapons.

The professor's home was in the converted horse stable of the mansion his wife's family

had owned for generations. The mansion looked out over the lush green forest that covered the top of this hill in the midst of the city. We drank the plum schnapps apparently served everywhere in Yugoslavia, and talked about government, law, peace, war, politics, history, Serbia. And New York. The impending war had forced him home, but a part of his heart still was in the Big Apple.

At some point, the conversation drifted to my new notebook computer, and his thoughts drifted to the retail marvels of Manhattan. He took me into his study to show me the computer, printer, fax machine, and other hardware he had brought with him on his last trip home. He became excited as he described in great geographical detail how to get to the virtually anonymous, second floor, back room store that was the absolutely cheapest place to buy a computer in New York that spring.

As he described how to snag the best deal on cutting-edge twentieth-century technology in the bowels of Manhattan, some memory of shopping there triggered an association in his mind with a seventeenth-century battle in which Serbs had committed atrocities against Croats. He changed topics and centuries, but his emotional intensity never varied: he was as outraged at the Serb perfidy of three centuries ago as he was excited by the bargain he had made in Manhattan last week. Both events seemed equally alive in his consciousness, equally a part of his view of the present.

This was a sophisticated man, a professor of finance and private international law, who had studied at Harvard, had been recruited to work at the U.N., and had seen much of the world. He was not a blind ideologue. He was the first Croat who expressed amazement and concern to me about how the Croatian government was handling privatization of the economy. Self-management was the mantra of Tito's progressive socialism, and much of the economy had been run under a system of worker control. Such a relic of the socialist

past could not survive in an era of democratic political and economic reforms, and the government was pursuing a privatization plan. One of the first steps toward *privatization* was to *nationalize* some important basic industries, like the railroads, electrical utilities, and some larger factories. The result was that key parts of the economy that had previously been decentralized would now be placed under the centralized control of the Croatian government. Unlike many of the Croats with whom I spoke, the professor recognized the irony of the transition, and found the privatization plan ominous at a time when the government was preparing for war.

Yet even this thoughtful man enthusiastically embraced the view that Croatia had done only right, and that Yugoslavia's present problems were entirely the fault of the Serbs. History confirmed this. Events like the seventeenth-century Serb massacre of Croats were living events that proved that the Serbs could not be trusted. On the other hand, claims that Croatia would harm the Serbs living within her borders were baseless, because Serbs had nothing to fear from Croats. Serb references to the Ustashi – Hitler's Croat surrogates in the Balkans, who had massacred hundreds of thousands of Serbs during the Second World War – were a misuse of history. Unlike the important Serb atrocities of three centuries ago, those Croat misdeeds of fifty years ago were ancient history, irrelevant to modern Yugoslavia.

Many of the Croats with whom I met echoed this theme. Uniformly they agreed that Serbs had nothing to fear in Croatia, that President Tudjman had done all that was necessary to reassure the Serbs of this fact, and that the Serbs were the cause of all of Yugoslavia's current problems. These Croats were understandably fearful of Milosevic's recent speeches proclaiming his dream of a Greater Serbia that would fulfill the inherent *right* every Serb possessed to live under a Serb government. To

them this sounded like Hitler's territorial claims to the Sudetenland, and they all predicted that Milosevic would use the excuse that Serbs lived there as the justification for seizing large regions of Croatia and Bosnia. The succeeding years have confirmed their worst fears about Milosevic and the willingness of the Serb armed forces to commit atrocity after atrocity in pursuit of Serb territorial expansion. Nonetheless, it was striking that people so sensitive to the lessons of ethnic history would be so blind to fears of the Serb minority within the territory controlled by the Croats, their historic enemies.



One of my last meetings in Zagreb was with a professor who was more than an advisor to the Tudjman government on issues of constitutional law; he was the primary author of Croatia's brand new constitution. He had relied primarily upon the French Constitution, but also had drawn upon the German and U.S. constitutions in his efforts to design a system that embodied western forms of constitutional democracy. He spoke in glowing generalities of the transition to democracy that was now complete in Croatia. Unlike the Serb-dominated Yugoslav Army and government, Croatia now was a pluralistic democracy whose democratic institutions would be protected by structural separation of powers enforced by judges deploying constitutional judicial review.

When I asked how the new judiciary actually was functioning in this new democracy, his smiling ebullience evaporated. With a grim honesty, he apologized: the new constitutional system had been in place only a few weeks, which was too short a time to expect complete changes in a system with no tradition of judicial independence. Of necessity, most judges were carryovers from the old system. Democracy had arrived, but the judicial indepen-

dence he understood to be an essential attribute of modern democracies would have to wait.

With that he turned to the subjects upon which all Croats seemed to agree. The Serbs were responsible for Yugoslavia's difficulties. Milosevic's expansionist plan for a Serb empire in the Balkans would cause war. Croatia had no responsibility for the bloodbath that was approaching, in part because the Croatian government had done all it could to reassure the Serb nation that Croatia's Serbs were safe in the new Croat democracy. Their rights as individuals and as a people were safe in large part, he asserted, because of the new system of judicial review, a system then entrusted to the same Party functionaries he had disparaged only moments earlier.

Even then, eight years ago, it was obvious that the Milosevic government – supported by the Yugoslav military and apparently by a large percentage of the Serb people – posed the gravest threat to stability and peace in what was rapidly becoming the *former* Yugoslavia. But in their own way, the Croats with whom I spoke were as myopic as the Serbs. They justified the Croat positions by advocating ideas so palpably inconsistent that they would have made you laugh, except that you knew the price of this self-delusion would be paid in blood.



A few weeks later, I spoke to a conference of international politicians, peacekeepers, and Yugoslav expatriates in Ottawa. I recall that my speech contained a few kernels of optimism, but looking back I cannot imagine what they might have been. In the main, my comments were pessimistic. I predicted that civil war in Yugoslavia was inevitable. I encouraged the peacekeepers to try negotiation and mediation, but advised that they should not hope for success. I urged the international politi-

cians to lobby for reforms in the Yugoslav political system, but cautioned against any serious chance for success. My message was not well-received.

Yet everyone in the meeting hall understood that Yugoslavia had no institutions to which its people could turn for nonviolent resolution of the disputes that were about to erupt into genocidal violence. Without a justice system in which its people believed, there was no hope for peaceful solutions. Without a judicial system that most people accepted as generally fair, independent, and reliable, the country found itself with nowhere to turn but to violence.


When they came to the brink of war early in this decade, many Yugoslavs recognized their desperate need for a legitimate judicial system. One of the Yugoslav government's last futile attempts to prevent the impending Serbo-Croatian war was to announce that it would create a new judicial structure that actually would ensure justice for Serbs in Croatia and Croats in Serbia. It was the right thing to do – only it was years too late.

Hard experience teaches that we should be skeptical of claims that we can transfer lessons from one country to another. But here is a lesson of which I am certain. In the "modern world," no country housing a pastiche of ethnic, religious, economic, and social groups is likely to survive, let alone survive in peace, without institutions that dispense neutral justice. In most societies, that means courts and judges and lawyers who perform the tedious but essential work of preserving the society – often by ending hot-blooded disputes without the necessity of bloodletting.

Would the existence of a healthy judicial system have prevented the past decade's wars in Yugoslavia? Probably not. The causes of the wars in Croatia, Bosnia, and Kosovo probably were too diverse, too entrenched, and too irrational to permit any deliberative solutions. As I write this, the news contains daily reports of evidence uncovered by those searching in the

rubble of Kosovo confirming the countless atrocities Serbs committed against the Kosovar Albanians – but also describing the agony of Serb families fleeing Kosovo in terror of the returning Albanian majority. These Yugoslav conflicts are the kind that Justice Holmes must have had in mind when, reminiscing about his involvement in our Civil War, he wrote: “I believe that force, mitigated so far as may be by good manners, is the *ultima ratio*, and between two groups that want to make inconsistent kinds of worlds I see no remedy except force.”⁴

A healthy Yugoslav judicial system probably would have been no more successful at preventing civil war than were the courts of

the United States more than a century earlier. We will never know. But we can be sure that the absence of a legitimate judiciary meant that no neutral institution existed to which those people could turn in search of peaceful solutions to their disagreements. Without courts and judges and lawyers situated to do the work of preserving their society, Yugoslavia’s combatants turned to the only remaining option. This is a lesson we must remember. If we fail to preserve the integrity, independence, and legitimacy of our courts; if we fail to honor the legal profession and its people; and if they fail to do work that deserves our respect, we too could be Yugoslavia. 

⁴ Holmes to Pollock, February 1, 1920, reprinted in the HOLMES-POLLOCK LETTERS: THE CORRESPONDENCE OF MR JUSTICE HOLMES AND SIR FREDERICK POLLOCK 1874-1932, at 36 (Mark DeWolfe Howe ed. 1961).