

Board, 367 U.S. 1 (1961) (Douglas, J., dissenting) (political dissidents), San Antonio School District v. Rodriguez, 411 U.S. 1, 70 (1973) (Marshall, J., joined by Douglas, J., dissenting) (the poor), Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) (minorities), Terry v. Ohio, 392 U.S. 1 (1968) (Douglas, J., dissenting) (the criminally accused in a Fourth Amendment search and seizure case), Sierra Club v. Morton, 405 U.S. 727, 741 (1972) (Douglas, J., dissenting) (the environmentalists seeking to achieve standing to sue in federal court despite having asserted no "individualized harm").

35. 304 U.S. 144. Footnote 4 of the decision qualified that abridgement of civil liberties must be subject to less generous scrutiny, especially when involving "discrete or insular minorities."

36. Revealingly, in his Lawrence opinion, not once did Justice Kennedy invoke Griswold or its house of privacy built far away from substantive due process. Instead, he began his opinion axiomatically: "Liberty [emphasis added] presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct." See Helen J. Knowles, "From a Value to a Right: The Supreme Court's Oh-So-Conscious Move from 'Privacy' to 'Liberty,'" Ohio Northern University Law Review, Vol. 33, 2006/2007.

37. Roe v. Wade, 410 U.S. 113, 168 (1973) (Stewart, J., concurring).

38. E.g., Solem v. Helm, 463 U.S. 277, 290 (1983) (Using "objective criteria" to conduct "proportionality analysis" in an Eighth Amendment case about recidivism of a non-violent felony).

39. 5 U.S. 137 ("It is emphatically the province and duty of the judicial department to say what the law is").

40. 198 U.S. 45, 70-71.

41. While the history and custom of our predecessors two centuries ago are helpful and informative, they are not now, and have never been, the end of our analysis. To state simply, short-cuts will not do. Scholarship casts some doubt on the popular understanding that jurisprudence predicated on English common law invariably delegates the task of legal determination to elected representatives. For instance, in the famous Bonham case (1610), 8 Co. Rep. 113b at 118a, Lord Coke had attempted to hold invalid an Act of Parliament that was inconsistent with common law. Over the years, constitutional or common law review was used mainly to block executive actions rather than the Parliament's prerogatives. There is, naturally, greater legitimacy when the legal system invalidates the decision of a single sovereign than of those collectively assembled to serve the public good. Recent English cases such as Ridge v. Baldwin (1964) AC 40, Padfield v. Minister of Agriculture Fisheries and Food (1968) AC 997, and Anisminic Ltd. v. Foreign Compensation Commission (1969) AC 147, have given close scrutiny to administrative action.

42. Cf. Ferguson v. Skrupa, 372 U.S. 726 (1963); Williamson v. Lee Optical Co., 348 U.S. 483 (1955) (state laws regulating business are subject only to rational basis review).

43. Moore v. City of East Cleveland, 431 U.S. 494, 502 (1977) (plurality opinion).

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The Limits of Nationalism: Serbia's 1991 Military Mobilization and Resistance to It.

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An examination of the shortcomings of Serbia's attempted general military mobilization in 1991 is conducted. The popular thesis that Serbian nationalism – because of its supposed uniqueness and abnormal predisposition to violence – was the primary force behind the participation of Serbs in the war is challenged. Based on primary military sources as well as secondary analyses of the mobilization, the period is offered as proof of the failure of nationalism to mobilize the Serbian population to participate in organized, collective violence. A brief historical context of the Yugoslav People's Army (JNA) and its transformation into a branch of Serbian power against separatist movements is given. The study finds that considerations like economic self-interest, opportunism and fear of violence were more likely motivations than nationalism was in determining Serbs' participation in military campaigns. More generally, the paper suggests caution about exaggerating the role of Serbian nationalism in determining Serbian behavior and collective action.

Sixteen years after the outbreak of civil war in the former Yugoslavia and eleven years after the worst atrocities in Europe since the Second World War, "Serbia" remains virtually synonymous with nationalist excess. Much of the literature on the tragic events of the 1990s has perpetuated the notion of the uniqueness of Serbian nationalism – the idea that Serbian nationalism is, in one way or another, an anomaly and exception in its unusual aggressiveness, intolerance, aversion to multiculturalism, propensity for violence, expansionist tendency or general "backwardness." Branimir Anzulović's *Heavenly Serbia: From Myth to Genocide* isolates the development of Serbian nationalist ideology from those of other South Slavic peoples to attribute an intrinsically "genocidal" nature to it.¹ Less extreme but somewhat similar approaches are visible in Michael Sells' *A Bridge Betrayed: Religion and Genocide in Bosnia*, in Stephen Schwartz's (and Christopher Hitchens') *Kosovo: Background to a War*, and even in the standard works of distinguished journalist Tim Judah.² In large parts, it was this "uniqueness" thesis that gave rise to the clumsy distinction between "ethnic nationalism" and "civic nationalism," the former being the destructive, anti-"liberal," virulent plague infecting the world and the latter being the democratic, multi-cultural, diversity-friendly model exemplified by peace-loving democratic nation-states.³ Accompanying these approaches is the belief – often quite explicit – that nationalism was a sufficient

and overwhelming source of motivation and action for Serbs. It was the nationalist mentality, the argument continues, that drove Serbs to participate in massive violence and bloodshed. This paper puts this claim to a succinct test.

Investigating what was in the heads of ordinary Serbs in 1991 is no easy task. State propaganda overwhelmingly dominated most media outlets, making content analysis of television and most newspapers highly unrepresentative. Even after the introduction of multi-party elections in 1990, the legacy of the Titoist single-party system was enormous, with the state silencing a vast majority of the population and allowing public visibility and voice only to a faithful minority that met the criterion of "moral-political aptitude."⁴ Prior to the establishment of Belgrade's Strategic Marketing agency in the mid-1990s, no private agencies measuring nationalism in public opinion methodically even existed, and the notion of impartial political surveys was largely unheard of. What I rely on here, therefore, is one of the few available windows into the role of nationalism in Serbian collective action in 1991: the response to that year's call for a general military mobilization. Like Churchill's democracy, this indirect approach to testing whether nationalism indeed translated into organized collective violence is the worst possible one aside from all its alternatives.

The prided Yugoslav People's Army (JNA) was a particularly noteworthy institutional symbol of "brotherhood and

unity." Military service was mandatory for young men, who were (as a custom) almost never assigned to their own republics for their terms, making service a formative experience in multi-ethnic cooperation and bonding. The army's composition roughly reflected the overall ethnic distribution: even as late as the summer of 1991, the entire army (recruits, officers and civilians) was 32.9% Serb, 17.5% Croat, 13.4% Muslim, 10.4% Albanian, 9.7% Yugoslav, 6.9% Macedonian, 5.4% Slovenian, 1.3% Hungarian, etc.⁵ The ten most important positions in the Ministry of Defense, the military district commands, the Air Force and the Navy were held by one Yugoslav (Veljko Kadijević, famously a son of a Serb father and Croatian mother), three Serbs, two Croats, two Slovenes, and two Macedonians. 38% of the High Command consisted of Croats, 33% of Serbs and 8.3% of Slovenes. Heroically defending the country against (largely fictional) Cold War threats and still glowing from its World War II victories, the JNA enjoyed substantial respect and popularity.

With the collapse of the one-party system, however, the institution was left without a system to defend; what is worse, with the collapse of the Soviet empire, it was left without an enemy to defend the system *from*. As anti-federalist forces came to power in most of the republics, the army sought a new source of legitimacy. "One obvious course of legitimization," Lenard J. Cohen noted, "was to focus the military's attention upon perceived *internal* threats to state unity."⁶ Not unlike individual Yugoslavs, the JNA faced an identity crisis. Traditional rationales for unity were being challenged by ethnic separatist movements, and the army's image as a multi-national pillar of socialist harmony was being replaced with a less flattering one. By the early 1990s, a new *raison d'être* for the military establishment took shape: to crush subversive elements within the federation⁷ and to protect a unified, cohesive Yugoslavia. In the wake of elections, the JNA disarmed the territorial defense forces of Slovenia and Croatia. By November of 1990, it effectively became an extension of Slobodan Milošević's power through the formation of a new League of Communists – Movement for Yugoslavia (*Savez Komunističke i Pokret za Jugoslaviju*, SKPJ). On May 9th 1991, the federal presidency gave the newly-named Yugoslav Army



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(YA) the order to halt “ethnic violence” within Yugoslavia’s borders.

Just as Serbs harbored a fondness for the “Yugoslav” identity to a higher degree than other peoples in the federation, they had several reasons to be similarly invested in the JNA to a higher degree than the other nationalities. Firstly, when it came to officers, they were dominant at 54.3% with an additional 9.6% of Yugoslavs who were “originally” Serbs. Secondly, the formal constitutional order was on the side of the Republic of Serbia: secession was illegal, armed resistance to the federation within its borders constituted terrorism, and the constitution obligated the JNA to protect the sovereignty and territorial integrity of Yugoslavia. Thirdly, while Croatian and Slovenian militias (as well as Albanian separatists) were receiving arms and funding from abroad, the Serbian minorities and their defensive militias would have had nothing without support from the JNA. And finally, lest it be forgotten, it was the Serbs who had sacrificed most and died in the greatest numbers in the People’s Liberation Struggle that established Yugoslavia and its military order. Serbs insisted on their epic tradition of military excellence and courage, as well as on the weighty fact that “the renown of the warrior is greater among Serbs”⁸ than it is among the other south Slavs – decisive reasons to uphold the honorable organization. The relatively high commitment to the army was duly reflected in a study of public attitudes toward financing the JNA in mid-1990, which showed that Serbia and Montenegro had the lowest numbers of people believing the JNA should be receiving “less financial support than now” and had the highest numbers of those believing it should be receiving “more than now.”⁹ Though officially defending “socialism” against internal subversive threats, it became clear to all the republics as well as to the Serbian leadership itself that the actual line was drawn between the JNA on one side and all the other national military groupings on the other.

Serbian and Croatian militias jointly declared violations of the truce ceasefire on August 23rd, 1991 and called for general mobilizations. On October 5th, the Serbian government called for a full mobilization. Milošević is reported to have said that his only fear was that there would not be enough uniforms for all the soldiers

eagerly waiting to defend their country. Here was a perfect opportunity for that vast Serbian public that voted overwhelmingly for parties with nationalist causes to actually fight for them. At the time of mobilization, 64% of Serbs expressed support for Serbia’s fighting for Krajina and Slavonija, two Serb-majority areas in Croatia.¹⁰ Between one fifth and one fourth of them supported parties calling for “Greater Serbia,” an entity stretching across Bosnia and into Croatia. Over half of the Serbian electorate voted for leaders in favor of preventing secession by force. Were these widely expressed values translated into organized violence when the opportunity came?

To the authorities’ great shock, nothing could have been further from the outcome. “The regime had a stubborn, mass resistance” to its war policy, Milan Milošević noted – far “more overwhelming than the marginalized pacifist groupings” that were thought to be the only ones remaining opposed.¹¹ In September, only 10-25% of the anticipated response rate was recorded; in December, not even one-fifth of the 100,000 activated reservists were responsive. In Belgrade, where gross numbers of activated men are highest in the republic, municipalities recorded responsiveness of 8%.¹² In Kragujevac, a site of famous World War II massacres and a major center of Serbian national pride, over 6000 men had better things to do than combat a return of Croatian fascism.¹³ A military unit in eastern Slavonija (Croatia) was expecting an additional five brigades from the mobilization; it received one and a half. On the strategically-crucial area around Banija and Kordun (where mixed Serbian and Croatian residents were about to be unmixed), an anticipated four military brigades turned into only one. In a recent testimony in front of the International Court of Justice, lawyer Radoslav Stojanović revealed that a meeting of the Supreme Defense Council of Yugoslavia on September 28th 1991 proclaimed that over 100,000 reservists called up by the mobilization had not reported for duty. Another 50,000 had left the ranks of the army and another 40,000 soldiers had defied orders to fight in Croatia. Some 200,000 reservists, in other words, refused the mobilization order. The ethnic breakdown of the people who had refused to fight reflected that of Serbia itself: 70% were Serbs and the rest were national minorities.¹⁴ On top of this,

another 150,000 men emigrated to avoid being drafted, while those who could not afford such a move “opted for internal emigration” and hid with relatives or friends throughout the country instead.¹⁵ For an army that numbered roughly 150,000 in all (including civilians, as well as tens of thousands of officers), these figures were devastating and suggestive of the risk that the Croatian army might outnumber the YA within months.

Frequent and massive rebellions also shook the army’s plans. Three revolts were marked in three days in Belgrade in the month of September, including one in the Air Force and one at the Military Medical Academy (*Vojnomedicinska Akademija*). Forty honorable members of the Guard Brigade in Belgrade publicly demanded the resignation of Yugoslavia’s Minister of Defense, expressing fury over the battle in Vukovar, the status of soldiers on the frontlines, invalids, combatants’ families, etc. One soldier from the Vukovar front drove an armored vehicle all the way back to Belgrade to park it in front of the federal parliament building in protest.¹⁶ On July 2nd, a few hundred mothers of recruits stormed the same building and occupied it for two days, demanding a retreat from Slovenia. Similar protests of restless relatives would occur again in Belgrade, Niš, and Novi Sad as the war progressed. As upheavals swept Kragujevac, Valjevo, Arandjelovac, Ada and Senta, the Belgrade newspaper *Vreme* announced that the situation had reached the level of “total military disintegration.”¹⁷ In all, it is estimated that over forty thousand conscripts actively participated in the 1991 rebellions.

Since the regime’s resolute policy was that neither Yugoslavia nor Serbia was officially at war in the first place, general mobilization was difficult to manage. Military police units would discretely pick up young men early in the morning at their apartments or sneak up on unsuspecting guests at cafes and clubs late in the night. This miserably failed recruitment procedure was the primary impetus for the reliance on volunteers and para-military formations, which turned out to be the most brutal and shocking actors of the entire civil war. Mercenary armies such as the Četniks organized by ultra-nationalist Vojislav Šešelj, the Serbian Guard organized by opposition leader Vuk Drašković, and the Tigers led by drug dealer and international

criminal Željko “Arkan” Ražnatović were operative both in Croatia and Bosnia. Though these units’ proud sponsors insisted that love of motherland and national loyalty attracted the bulk of their volunteers, studies have shown otherwise. Like their Croatian and Bosnian counterparts, these young men were overwhelmingly “recruited from the underclass” and primarily attracted to the prospects of robbery and pillage with impunity.¹⁸ Many did not even care to participate full-time, preferring to enter war areas only on weekends for a brief looting drive followed by an immediate return to Serbia and Montenegro – the so-called “weekend volunteers.” From utter poverty, these young men often came to acquire enormous wealth in the wars, “filling their trucks with the entire furnishings of homes and apartments and selling their booty on a flourishing black market.”¹⁹ Those from outside Serbia, and especially residents of rural areas, were often involuntary volunteers, caught in the middle of the fighting and given no choice but to join at the threat of death or harm to their families. Far from taking the recruits’ nationalist fervor for granted, the unit commanders had to actively instill the proper values: “It was common for the men of this group,” Stipe Sikavica found, “to be forced to prove their loyalty by murdering a neighbor of a different national origin.” Although actively involved in major phases of the war and although constantly rotating, these paramilitaries often numbered less than 50, commonly were a few hundred strong and rarely ever consisted of more than 1000 volunteers. For all these reasons, these bands do not meaningfully reflect nationalist sentiment, let alone represent it for the Serbs at large.

In conclusion, when it comes to translating values into actions of organized violence, Serbian nationalism did not seem to “walk the walk,” if you will. Presidents and parliamentary representatives were elected for their nationalist credentials,

surveys showed support for state violence against separatism, and xenophobic values were endorsed by a majority, but Serbs were not enthusiastic about risking their lives to themselves act on these convictions. Military mobilization was a decisively “top-down” phenomenon, driven by a desperate state encountering both passive and active resistance from its subjects. Coercion and “forced volunteering” were the primary means of conscription, not abstract appeals to ethnic identity. Even when interest in active war-making was shown “from below,” it was more often motivated by profit or personal advantage than by nationalist conviction. Fighting for the glory of the Serbian nation seems to have had more to do with being in the wrong place at the wrong time than with a passionate attachment to Serbian-ness.

Notes

1. Branimir Anzulović, *Heavenly Serbia: From Myth to Genocide* (New York: New York University Press, 1999).
2. Michael Anthony Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia* (Berkeley: University of California Press, 1998); Stephen Schwarz, *Kosovo: Background to a War* (London: Anthem Press, 2001); Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia* (New Haven: Yale University Press, 2000); *Ibid*, *Kosovo: War and Revenge* (New Haven: Yale University Press, 2000).
3. For just one example, see Ariel Rosenthal, *Ethnic Nationalism & the Fall of Empires: Central Europe, Russia & the Middle East, 1914-1923* (London: New York: Routledge 2001), 3-4, though the distinction is pervasive.
4. Moralno-politička podobnost was a prerequisite not only for those associated with the Union of Communists of Yugoslavia (SKJ), but for everyone from janitors to university professors. A rigorous filtering process left all those deemed “morally-politically inept” largely outside the public arena at best and imprisoned for counter-revolutionary activity at worst.
5. Svetozar Stojanović, *The Fall of Yugoslavia: Why Communism Failed* (New York: Prometheus Books, 1997), 105.
6. Lenard J. Cohen, *Broken Bonds: The Disintegration of Yugoslavia* (Boulder: Westview Press, 1993), 183. Emphasis in original.
7. See the Yugoslav Censuses from 1971, 1981 and 1991, available at the Belgrade Center for Political Studies and Public Opinion Research (Centar za političkoška istraživanja i javno mnjenje).

8. Stojanović, 106.
9. Cohen, 185.
10. Aleksa Dijas, *Najleže Pitanje* (Belgrade, Serbia: Artist, 2005), 36.
11. Marko Milošević, “Čepanje Poternice” in *Vreme*, January 27, 1996, p.11.
12. Bora Radović, *Jugoslovenski ratovi 1991-1999 i neke od njihovih društvenih posledica* (Belgrade, Serbia: International Aid Network, 2000), 42.
13. Ozren Žunec, “Rat u Hrvatskoj 1991-1995: I dio: Uzroci rata i operacije do Sarajevskog primirja” in *Polemos*, Volume I, Issue 1 (January – June, 1998), 163; Misha Glenny, *The Fall of Yugoslavia* (London: New York: Penguin, 1993), 141.
14. Cited in Radoslav Stojanović, *ICJ Testimony*, CR 2006/15 (translation), Friday, March 10, 2006.
15. Dijas, 142.
16. Žunec, 140.
17. *Ibid*, 151.
18. Stipe Sikavica, “The Army’s Collapse,” in *Burn This House: The Making and Unmasking of Yugoslavia*, edited by Jasminka Udovčki and James Ridgeway (Durham, NC: Duke University Press, 2000), 141.
19. *Ibid*.
20. Sikavica, 142.
21. Dan Voich and Lee P. Stepina, *Cross-Cultural Analysis of Values and Political Economy Issues* (Westport, CT: Greenwood Publishing Group, 1997), 161-185.



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