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Genocide or Partition: Two Faces of the Same Coin?

Susan L. Woodward

Robert Hayden is not alone in wondering why the expulsion of Serbs from Croatia in 1991 and 1995 was labeled a population transfer and even justified by the logic of nation-states, while the expulsion of Muslims by Serbs in 1992–96 from an area of Bosnia and Herzegovina that the Serbs claim for their state was labeled genocide and justified establishing an international war crimes tribunal. Hayden wants to protect the term *genocide*, and its legal standing internationally, for truly *exceptional* instances—to wit, the Holocaust, and nothing else until, God forbid, there should be another such instance. By contrast, he argues, population transfers, even on a massive scale and forced, are not pathological. “Ethnic cleansing” of territory in the former Yugoslavia, whether of Croatia or of Bosnia and Herzegovina, is unexceptional, a normal part of the history of the twentieth century. Although final solutions are not inevitable—Hayden criticizes Croatian President Tudjman for writings that seem to have justified the Serb expulsion as such—“ethnic cleansing” is a part of the history even of states that now sit in moral condemnation of the Balkan horrors and the Bosnian Serbs.

The term *genocide* connotes more, however, than a moral judgment on one historical event. It invokes an obligation to act. Those who did little to prevent or stop the Holocaust attempted penance after World War II by constructing an international humanitarian law that would oblige the international community to respond in the future. Population transfers carry no such obligation. The rhetoric of genocide is therefore necessarily political. It aims to sound the alarm and oblige action. The claim by Serbian nationalists in the 1980s in Kosovo and Croatia that Serbs were, or were threatened with becoming, victims of genocide was absurd. Yet its role in sounding an alarm, attempting to differentiate Serbs from Albanians and Croats, and invoking the collective obligation of all Serbs to come to their aid and provide protection should have been heard and treated as deadly serious; instead it received only laughter and derision. The critics of the international community’s response in the Bosnian case, such as David Rieff, Norman Cigar, Roy Gutmann, and journalists at *Warreport*,¹ complain that governments (the Bush administration primary among them) stopped short of defining the expulsion of Bosnian Muslims as genocide so that

1. David Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (New York, 1995); Roy Gutmann, *A Witness to Genocide: The 1993 Pulitzer-Prize Winning Dispatches on “Ethnic Cleansing” of Bosnia* (New York, 1993); Norman Cigar, *Genocide in Bosnia: The Policy of “Ethnic Cleansing”* (College Station, Tex., 1996); Ben Cohen and George Stankoski, eds., *With No Peace to Keep: United Nations Peacekeeping and the War in the Former Yugoslavia* (London, 1995).

they would not feel obliged to act. The moral issue in Bosnia is not, as Hayden structures it, of historical parallels: whether ethnic Germans may have been unjustly expelled from eastern Europe after World War II (although recent Czech-German negotiations demonstrate continuing disagreement on that matter); whether we have been denied the story of Schindler's fate, as we have; or whether Serbs in World War II were victims along with Jews of attempted genocide, as they were. The moral demand is that times should have changed by the 1990s. And although the International Criminal Tribunal for the former Yugoslavia and the Commission of Experts that preceded it were set up during the Bosnian war, the international response is still post hoc—declaring unacceptable and punishable actions that were preventable and should have been prevented.

The primary difficulty with the rhetoric of genocide is its emotional baggage. Hayden implies this when he accuses the rhetorical structure and its basis in the crimes of the Holocaust of absolutizing evil (“justice trumps anthropology”). Demanding unexamined condemnation, the rhetoric prevents any rational debate about what the obligation to act requires, and it includes in that condemnation those who would dare to do the analysis that effective action requires. Moreover, the concept of genocide is perhaps too easily adapted to political propaganda because of its collective assumption. It requires action on behalf of collectivities—the *gens*—and therefore, by definition, political action, involving partisanship, group loyalty, and mechanisms of protection. Rather than protecting individuals against the exclusivist nationalism targeted by genocide accusers, the rhetoric of genocide adopts the same communitarian thinking. Ironically, the response to the Holocaust and ideas of racial purity has been to institutionalize a new form of racism—protection bonded to generic, ethnic, group thinking that treats people as members either of majorities or minorities. Thus, the international war crimes tribunal, Hayden argues, cannot serve its claim to break the cycle of ethnic retribution by individuating guilt, for its purpose is to assign guilt for crimes committed “in the name of one collectivity . . . against another.” Individuals may be acquitted but not the charge. The idea of collective vengeance and self-defense is perpetuated into the next generation.

Hiding behind the emotional response to a discussion of genocide, however, is a far more troubling issue. This is Hayden's assertion about a “logic of the nation-state” and twentieth-century history. What are the implications of his plea that we confront the unexceptionality of mass expulsions? Is he right that a nation-state “precludes the existence of national minorities within it”? Are minority rights an “oxymoron in Central Europe”? Did the European Community's acceptance of the Croatian claim of “historical rights” to a nation-state and its territory force Serbs to leave and ensure the division of Bosnia? “Bosnia in 1992 had as little chance of avoiding partition as Punjab had in 1947,” he writes.

Hayden rightly reveals the sanctimonious prejudice of those pow-

ers that arbitrarily assigned a territory to one national group when two or more groups claimed that territory, that refused to redraw borders according to the principle of national self-determination that might maximize the number of people encompassed in a state of their own nationality (rather than forcing them to move from ancestral homes), and that then differentiated between legitimate and criminal acts of expulsion according to their initial arbitrary assignment of sovereign title to the land. After Croatia declared its independence in June 1991, and certainly after Germany won the battle to gain international recognition for Croatian independence in December 1991, there was never any question for most people that the Serbs in Croatia had to accept their new status as barely tolerated cultural minority. The diplomatic community had no tolerance whatsoever for the refusal of the Krajina Serbs to negotiate with Zagreb over their status in Croatia and their wish to hold out (naively, it was felt) for union with Serbia instead. The battle continues today in eastern Slavonia, under United Nations Transitional Administration (UNTAES), where efforts to raise the question of Serb rights are soon met with exasperation at people who do not seem to understand that “after all, this is Croatia.”

But Hayden could be accused of the same logic. By arguing that the partition of Bosnia was inevitable once Yugoslavia dissolved and that it would have been preferable if the international community had accepted partition, Punjabi-style, obtaining “a prior agreement on territorial division,” because it could have been done with far less violence and destruction by giving people a choice to move, he is also prescribing the Croatian scenario. Granting territorial sovereignty to a majority leaves no option to those who are not of that majority—whether Serbs in Croatia or Bosnian Muslims, Bosnian Croats, or Bosnian Serbs finding themselves in a local minority in a section of partitioned Bosnia—but to suffer in silence or to leave. When Slovenia and Croatia, which had never been independent states, were accorded their “historical right” to statehood, and their argument that Yugoslavia had been an “artificial state” became conventional wisdom, then Bosnia and Herzegovina—which had also never been a state but had older (“historical”) borders than Slovenia and Croatia—had, of necessity, to be seen as artificial. Like the diplomatic community that views the Bosnian conflict as fundamentally a conflict between Serbs and Croats, must we accept that the Bosnian Muslims are the Balkan Sikhs? “Having ruled out the partition of Bosnia,” did the international community really “le[ave] no choice to those who rejected inclusion in a Bosnian state other than to partition it by military means”? Would the resulting population transfer have occurred quickly, and with comparatively much less blood and tragedy, if the partition option had been chosen in 1991 or early 1992?² Could the physical destruction—by those leaving out of revenge or by those staying to prevent returns—

2. A powerful argument against this thesis is presented by Radha Kumar in “The Troubled History of Partition,” *Foreign Affairs* 76, no. 1 (January–February 1997): 22–34.

that is common wherever such movements occur, have been prevented or guaranteed reconstruction?

Hayden is surely right that the certainty of a partition would have eliminated the contest over Bosnian independence, and therefore some of the bloodshed. But would preannounced borders have prevented war? The primary reason for war, it is generally accepted, was displacement. People *did not want to move*; they had to be forced. And although Serbs and Croats might have agreed on where to draw the border between them, how would Muslim agreement have been obtained? The obstacles can be clearly seen in Xavier Bougarel's data as displayed in table 1.

Nonetheless, Hayden is not alone in proposing partition as the most stable and humane outcome for Bosnia. In addition to the nationalist claims of Croatian president Tudjman to the 1939 (*Sporazum*) borders of Croatia as its historical patrimony, thus including much of Bosnia in Croatia proper, and the numerous discussions he initiated with Serbian president Milošević in July 1990, the Yugoslav presidency debated the option in spring 1991.³ The Dutch presidency of the European Community, which began on 1 July 1991, proposed on 13 July that negotiations over the "future of Yugoslavia" pursue "a comprehensive solution which involves all republics and the federal government," with a "voluntary redrawing of internal borders as a possible solution" because of the conflict between the principle of self-determination and the existing internal borders.⁴ In the United States, neorealists led by John Mearsheimer argued early in the war that the partition of Bosnia would provide a more stable outcome.⁵ And now, given the reality in Bosnia of three, nearly homogeneous ("ethnically cleansed") territories and separate political-economic systems, the continuing expulsions by all three nationalist parties of people in the

3. Sava Bosnitch, University of New Brunswick, has discovered a confidential memorandum drawn up in June 1944 by the research department of the British Foreign Office regarding the six possible solutions for Bosnia and Herzegovina after the war: (1) the restoration of the status quo ante 1939 (inclusion in a centralized Yugoslavia), or if Yugoslavia became a federal state, one of four options: (2) an autonomous member state (which occurred), (3) a partition of Bosnia (and the Serb-inhabited districts of Croatia) by plebiscite, (4) partition according to the *Sporazum* (1939 autonomy agreement), (5) partition based on geographical convenience along the Vrbas/Bosnal/Neretva line with some population transfers of the 700,000 or so Croats and Serbs who "found themselves dissatisfied with their lot"; or, (6) "should Yugoslavia disintegrate, and separate States of Serbia and Croatia emerge, the solution of the Bosnian question would become much more difficult. The solution [5] would then appear to be the most reasonable, since it would give advantages to, and require sacrifices by, both parties and would provide Serbia with access to the sea. Any settlement of this kind would probably need forcible imposition by the Allied Powers." From "Bosnia-Herzegovina," *Balkan States: Confidential* (16619), 31 July 1944 (Section 5). I am grateful to Professor Bosnitch for providing me a copy from which these excerpts are taken.

4. David Owen, *Balkan Odyssey* (London, 1995), 32–33.

5. John J. Mearsheimer and Robert A. Pape, "The Answer: A Three-Way Partition Plan for Bosnia and How the U.S. Can Enforce It," *New Republic*, 14 June 1993, 22–28.

Table 1.
Separation of the Three Constituent Communities of Bosnia and Herzegovina according to the Type of Communitarian Relations, by Commune (1948–1991)

Communitarian Relations	1948	1971	1991
Muslims			
Hegemonic	6.0% (2)	7.3% (3)	8.1% (3)
Bipolar (w. Serbs)	40.9% (35)	53.0% (59)	58.6% (66)
Bipolar (w. Croats)	9.8% (13)	11.5% (25)	11.7% (26)
Heterogeneous	43.3% (16)	28.2% (19)	21.6% (14)
Serbs			
Hegemonic	18.6% (9)	13.0% (12)	7.9% (8)
Bipolar (w. Muslims)	37.4% (25)	58.8% (58)	65.8% (67)
Bipolar (w. Croats)	15.6% (14)	6.8% (20)	6.7% (22)
Heterogeneous	28.4% (18)	21.4% (16)	19.6% (12)
Croats			
Hegemonic	21.7% (4)	17.2% (6)	16.9% (7)
Bipolar (w. Muslims)	20.9% (15)	25.5% (41)	40.6% (53)
Bipolar (w. Serbs)	24.8% (33)	25.5% (43)	18.0% (38)
Heterogeneous	32.6% (14)	31.8% (16)	18.5% (11)

Notes: Bougarel's classification refers to the proportion of the population of each of the three constituent peoples of Bosnia and Herzegovina by commune: *hegemonic* where one community is overwhelmingly dominant, *bipolar* where two communities are in roughly equal proportion, and *heterogeneous* where the communities are so mixed that each represents less than 50 percent of the population.

The numbers in parentheses refer to the number of communes (*opštine*) involved.
 Source: Xavier Bougarel, *Bosnie: Anatomie d'un conflit* (Paris, 1996), 144.

wrong place (in 1996, more were expelled than returned), and the apparent lack of interest on the part of at least most Bosnian Serbs and Bosnian Croats in pursuing the reintegration required by the Dayton Accords, an entire school of thought and academic advocacy has emerged around the alternative of partition. In contrast to civil wars of an ideological nature, they argue, the most humane and realistic solution to ethnic conflict (as they classify Bosnia) is territorial partition and demographic separation.⁶

The timing of Hayden's contribution could not be more welcome. The international community under American leadership is currently in Bosnia and Herzegovina with a mandate not to accept the population transfers and consequences of ethnic cleansing. The Dayton Agreement aims to *reverse* these consequences and create a single, multiethnic Bosnia. To all who were citizens of Bosnia and Herzegovina in March 1991, the agreement gives the right to return to their prewar

6. See Chaim Kaufman, "Possible and Impossible Solutions to Ethnic Civil Wars," *International Security* 20, no. 4 (Spring 1996): 136–75; and John J. Mearsheimer and Stephen W. Van Evera, "When Peace Means War," *New Republic*, 18 December 1995, 16–21.

homes or be compensated. The agreement also obliges the signatories to cooperate with the International Criminal Tribunal for the former Yugoslavia by arresting indicted war criminals and extraditing them to The Hague. The second London conference on civil implementation, held 4–5 December 1996, gave pride of place to more assertive enforcement in 1997 through the use of conditionality (largely withholding economic aid) against those who obstruct the return of people to their 1991 homes or the work of the tribunal. At the top of the agenda for 1997 are refugee repatriation and indicted war criminals. During 1997, pressure from world public opinion and the holding of postponed Bosnian municipal elections will, in fact, confront the peace implementation mission and the international community with some difficult decisions concerning the unresolved political compromises of the Dayton Agreement. Will American and European leaders accept the *fait accompli* of partition, proving Hayden correct, or will they accept the time and financial commitments of an international obligation to a sovereign, integral Bosnia and to the victims of gross violations of international humanitarian law?

But were these two alternatives—Bosnian sovereignty and war, or partition and population displacement—the only ones in 1991–92? And are commentators correct that the only alternatives in 1997 are a multiethnic, reintegrated Bosnia or partition?⁷ What then of the constructivist and differentiated approach to national identity and population transfers that Hayden advocates? The partition scenario pays no more attention than the rhetoric of genocide to the *internal* relations of a collectivity. Is group-based protection better than the protection of multiple alliances and of conditions that allow for relationships based on any number of the multiple aspects of individual identity? Sovereignty reigns in either scenario in the limits on international obligation to choosing *who* among competitors is sovereign and then to acting as “moral compass” about “what behavior *should* occur in civil wars” and as “pedagogue” in educating people that crimes have been committed.⁸

Assigning sovereignty to one group assumes that that group is capable of policing itself and that there are sufficient safeguards against majority tyranny. What guarantees has the international community established? If anyone can employ the rhetoric of genocide, and legal judgments are only a matter of major power politics, historical alliances, and effective propaganda with major capitals and their domestic publics, then of what use is the apparatus set up in response to the Holocaust? The Hague tribunal was set up during the war in Bosnia to do more than assess guilt: it was to help bring about peace by sub-

7. This author proposed a third alternative in “America’s Bosnia Policy: The Work Ahead,” *Brookings Policy Brief*, no. 2, July 1996.

8. The Honorable Antonio Cassese, president of the International Criminal Tribunal for the former Yugoslavia, speaking of the two functions he ascribes to the tribunal at the conference “A Year after Dayton: Has the Bosnian Peace Process Worked?” at Yale University Law School, New Haven, Conn., 16 November 1996.

stituting international law and an international court for domestic law and courts when they were absent in Bosnia.⁹ In what way does the operation of the tribunal in The Hague help to build the rule of law, civil and human rights, and independent courts in Bosnia now?

Justice may not trump anthropology, but the historians and anthropologists have not provided the diplomats and peacebuilders with advice on putting their constructivist approach to identity into practice. Partition is the more likely alternative in Bosnia because the ruling parties continue to pursue the communitarian logic, but is it also because partition is the only thing that the international community knows how to do? What of the media, trade unions, and student and pacifist movements that opposed the communitarian dismantling of Bosnia by the nationalist parties between their election in November 1990 and their victory over the civic alternative in April 1992?¹⁰ Where in this discussion is the true victim of that communitarian logic of both the ruling parties and the international community—the civilian population of all identities and their emerging civil society on the eve of war? What state will protect them now, whether Bosnia remains whole or is partitioned? Instead of spelling the death knell for the right of national self-determination, the Yugoslav fragmentation is interpreted as a new “springtime of nations” and the *natural* completion of the nineteenth-century process of nation building.¹¹ If the reception to Samuel Huntington’s thesis on the coming clash of civilizations is any predictor, the future of genocide, ethnic cleansing, and population transfers is frighteningly alive and well.¹²

9. This latter point was made by Ruth Teitel, professor at the New York University Law School, in her presentation at the Yale conference “A Year after Dayton.”

10. This is carefully chronicled and analyzed by Xavier Bougarel in “Bosnia and Hercegovina—State and Communitarianism,” in David A. Dyker and Ivan Vejvoda, eds., *Yugoslavia and After: A Study in Fragmentation, Despair and Rebirth* (London, 1996), 87–115.

11. This appears to be the dominant view with respect to Slovenia and Croatia, as well as the Czech and Slovak republics and much of the former Soviet Union. Indeed, the popularity of Ivo Banac’s attack on integrationist projects of the French and American model under the label of Jacobinism (*The National Question in Yugoslavia: Origins, History, Politics* [Ithaca, 1984]) should be a warning to the Dayton optimists. The most recent contribution is Robert Wiebe, “Humanizing Nationalism,” *World Policy Journal* (Winter 1996–97): 81–88.

12. Samuel F. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York, 1996).