Reconciliation, Truth, and Justice in the post-Yugoslav States

NEBOJSA BJELAKOVIC
Carleton University, Ottawa

ABSTRACT
This article explores the possibility of methodologically problematizing the issue of truth, justice and reconciliation in the former Yugoslavia as opposite to the predominant approach of seeing this issue in the ethical or value judgment prospective. The article will explore achievements in and obstacles to reconciliation among the Yugoslav successor states. It will proceed with the line of reasoning that success in reconciliation could be facilitated by the re-examination of dominant narratives about the pre-war and war events (the issue of “truth”) and by the successful implementation of the principles of justice, such as prosecution of war criminals. Contemporary discourses will be examined in order to position dominant perceptions on war crimes and issues of responsibility in the post-Yugoslav “core states” of Croatia, Bosnia, and Serbia. Special attention will be paid to their relationships toward the International Criminal Tribunal for the Former Yugoslavia (ICTY). At the end, the article will argue that: if there is the respect of separate avenues of activity of the International Criminal Tribunal for the Former Yugoslavia, the state sponsored Truth and Reconciliation Commissions, and the regional NGOs then they will complement each other in achieving reconciliation among different ethnic groups. Otherwise the clash of perceptions and incoherence in discourse of these three groups of actors could lead their actions to nowhere.

The post-war revitalization of Yugoslav successor states will be complex economic and political endeavor where each of the countries involved will, hopefully, search for the specific developmental strategy best suited for its conditions. But what those countries should do jointly in order to maximize the future multiethnic accommodation is to address the issues of freedom of movement (legal euphemism for return of refugees), return of all private property...
to its pre-war owners, and investigation and prosecution of war crimes. These acts would establish a minimum of rule of law required for potential reconciliation among different ethnic groups. The relevance of reconciliation is pivotal, as successor states, to different degrees and despite the efforts of national ideologues, remain to be multiethnic societies and will be more and more so if the freedom of movement and return of private property are achieved. For the last seven post-Dayton years mediocre results were accomplished in regard to restoration of freedom of movement and return of private property while some success was met on the issue of war crimes. This difference was probably due to the fact that the issue of war crimes is more internationalized and institutionalized, embodied in the presence of International Criminal Tribunal for the Former Yugoslavia (ICTY), than it was the case with the freedom of movement and return of private property, but also because in its essence it is more political and ideological than economic or social issue.

In this post-Tudjman/post-Milosevic era the priorities of core Yugoslav successor states’ governments (Croatia, Bosnia and Herzegovina, Yugoslavia) are more pragmatic than visionary and one should not blame them for that. Precisely for that preoccupation and pragmatism in dealing with complex and difficult economic and social realities the issue of war crimes comes to the fore as a paradox: this issue is politically more divisive than any economic or social policy dilemma. The consequence is that imperatives of stability within each of these countries precede interest in reconciliation, at the same time when the imperative of institution-building precedes the interest in the rule of law. This is perhaps why on these issues of economic and social nature, such as the freedom of movement and return of property, the governments and societies of the core Yugoslav successor states have achieved domestic consensus. Consequently, as examined discourse indicates visible differences in these societies do exist only on the issue of war crimes. Despite the governmental efforts to minimize it the open debate emerged between the “advocates” of prosecution of war crimes and their “opponents” having its primary focus on their relationship vis-à-vis the ICTY.

Analysis of this debate leads to conclusion that different perceptions represent point of contention between the ICTY’s “advocates” and “opponents.” The “advocates” perceive the work of ICTY as return to the rule of law where justice will be reached only when perpetrators of crimes are punished, while the “opponents” perceive this court as the final adjudicator of ultimate guilt and responsibility for the outbreak of Yugoslav civil wars. This difference in perceptions is fundamental for the manifestations and escalation of complaints raised by both groups. At the same time, the methodological fallacy that those groups exhibit when engaging in the debate further complicates their relationship to the point that it is not any more a dialogue but the imposition of two monologues that have so far resulted in political status quo.

The main line of reasoning of the “advocates” is that there is a legal obligation of successor states to obey ICTY’s demands and rulings. Additionally, the “advocates” will argue that a success of democratization is directly linked to
the full cooperation with the ICTY. This ideologically implies that those who do not comply with The Hague are opposing democratic practices and standards. For that matter the ICTY figures as a democracy-building test case for the Yugoslav successor states. Practical possibility of conditioning international developmental and financial aid to the full cooperation with the ICTY transforms this ideological claim into a real policy.

Correspondingly, the elaboration of “opponents” escalates into negation of the democratic character of the ICTY itself based on circumstances of its creation, lack of Yugoslav successor states participation in its functioning, and dissatisfaction with its practices and verdicts. Particularly complex is the debate about the ICTY in the post-Milosevic Yugoslavia. ICTY has quite good standing among the NGO community and independent media but its most vocal “opponents” are coming from the public policy side – the government. However, the attempt of mapping the “advocates” and the “opponents” should not simplify this debate by placing these groups into the pro-Milosevic and anti-Milosevic political forces or into those who are “more nationalist” and “less nationalist” oriented. There are three main reasons that make the mapping difficult:

First, both groups share the value judgement that however ethically and humanely painful the ethnic division is permanent and irreversible, at least in our lifetime. For that matter reconciliation is not perceived as inter-ethnic (across the state borders) but primarily as intra-state affair (within the state borders).

Second, it would be hard to argue that the main difference between the “advocates” and the “opponents” is ideological since they both share fundamental appreciation in the principle of justice and disrespect in crime. Thus killing of civilians, tortures of prisoners or rape are equally condemned by both groups.

Third, both “advocates” and “opponents” would claim that those crimes were acts of individuals and that the quest for responsibility or guilt should be placed on those individuals and not on entire ethnic groups or states. Correspondingly, both groups would try to marginalize the concept of command responsibility as in their view the Yugoslav civil wars were more chaotic events than results of centrally planed and executed policies. Neither the “advocated” nor the “opponents” would like to start the post-Tudjman/post-Milosevic state-building era with a heavy stigma of collective responsibility for war crimes or the economic burden of paying for war reparations. So, what then divides the “advocates” and “opponents”?

It could be argued that the spiraling of mutual complaints between the “advocates” and the “opponents” is primarily due to the application of different levels of analysis – meaning that it is of a methodological nature. In this case different levels of analysis essentially mean that if one group points at specific episode as a war crime the other group would approach this same episode from the general prospective arguing that war is dirty affair related to unwanted elements of human nature and that crimes always happen during wars. Social scientists and linguists will tell you that in a situation where different levels of analysis were used there is no dialogue but cacophony between interlocutors. Or
to quote the favorite academic expression: “you are mixing apples with oranges.” And this is probably why those two groups seem to be so apart while essentially, as mentioned earlier, they share the same theoretical foundations.

This methodological fallacy of oscillating between different levels of analysis was the ill-born product of Yugoslav crisis. At the very end of the 1980s the bureaucratic communist discourse invented and applied this technique when faced with political challenges of democratization and possibility of loosing its power. The environment of civil war and nationalism further facilitated spread of this technique into society so it became a part of dominant discourse, or more precisely a standard method of conducting a discourse. To make things more complicated (and in order not to blame only Yugoslavs for this technique) the “international community” joined the fray during and after the NATO war against Yugoslavia. One should look at the NATO war-time briefings and notice that killing of civilians is not a crime but normal part of warfare. The explanation of Albanian crimes against Serbs committed after the arrival of international troops in Kosovo was depicted in the KFOR briefings as “understandable revenge” and not as a crime, so that the specific is replaced with the general. In every case the political effect of such a methodological fallacy embedded into dominant discourse was the absence of change and prolongation of status quo.

So, despite this analytical attempt to understand “the ins and outs” of the “advocates” and the “opponents,” the question remains: could this knot be untangled, and apples and oranges put into two separate boxes. Could the addressing of specific crimes be debated for what it is – specific event. Correspondingly, could we change the status quo and achieve some progress on the issues of freedom of movement, return of private property to its pre-war owners and prosecution of war crimes.

It seems obvious that the fundamental difference in the perception of ICTY has to be addressed. ICTY is only a court that punishes episodes of crimes committed in war and in order to deal with the issue of interest for the “opponents” (ultimate guilt and responsibility for the outbreak of Yugoslav civil wars) some sort of Truth and Reconciliation commission(s) should be established. These two institutions will be dealing with different aspects of recent Yugoslav history: the ICTY will deal with specific issues, while the Truth and Reconciliation Commission(s) will be dealing with contextualization, thus with more broader and general issues. As the state sponsored Truth Commissions’ reconciliation domains would not provide for the inter-ethnic reconciliation, there is a space for NGO community to fill this gap with its own trans-border initiatives making this triad of actors (ICTY, states’ based Truth Commissions, and NGOs) working on different but complementary fronts. Thus, if apples and oranges were to be placed in proper boxes these acts would establish a minimum of rule of law required for potential reconciliation among different ethnic groups.

On the other hand the ICTY should not act as the marker of democracy tests that could actually penalize entire societies for their poor performances. Instead it should assist the Yugoslav successor states’ institution-building by being a partner with their juridical branches. Otherwise, there is a danger that the
ICTY, with its over one thousand employees and more than one hundred dollars yearly budget, could follow the Weberian prophecy of institutional self-admiration of serving only its own self-preservation bureaucratic interests instead of specific goals for which it is created.