

Who Deserves Kosovo? An Argument from Social Contract Theory

MATTHEW WOOD HERBERT

Disclaimer: The author is employed by an American defense contractor as the senior political analyst, Kosovo Forces (KFOR), Multinational Brigade East, Camp Bondsteel Kosovo. The views expressed in this paper are the author's alone. They do not express the positions of his employer, the U.S. Government, the U.S. Army, the North Atlantic Treaty Organization (NATO), or KFOR.

ABSTRACT

Talks to determine the political status of Kosovo will probably begin this year. Serbia insists it will rule its southern province again, but 90% of Kosovo's inhabitants demand independence. Recent policy literature has focused on two themes—the legal grounds of each side's claim to Kosovo and the security risks of achieving final status. These approaches, however, plunge midstream into philosophical issues that must be traced to their roots in order to answer the question *who deserves Kosovo?* This paper argues that state's rights derive from the state's constitutive obligations, and that Serbia has alienated its right to rule Kosovo through willful, protracted failure to uphold its basic obligations there.

The political fate of Kosovo has hung in limbo since 1999, when NATO expelled Yugoslavia's army, police and paramilitaries and installed an interim administration under the United Nations. According to international law and the applicable constitutions,¹ Kosovo is still a province of the Republic of Serbia, whose government insists it will rule again when the UN leaves. However, the ethnic Albanians, who make up more than 90 per cent of Kosovo's inhabitants, insist Kosovo will be independent of Serbia. This dilemma will be at the center of talks scheduled to begin later this year on Kosovo's political status. But the diametrically opposed positions of Belgrade and Pristina will not be the only complication to be tackled. Extremists with separatist agendas in Bosnia-Herzegovina, Macedonia, and Serbia proper will follow the talks closely, hopeful for any hint of partition in Kosovo—a precedent that would potentially unravel peace settlements in their own areas and open the prospect of border change. Regional peace will depend on the success of the negotiations and the stakeholders' capacity to accept the outcomes.

Determination of Kosovo's status has been put off so long because of the difficulty of reconciling the several layers of variables at play. Serbs and Albanians on the ground cohabit in an uneasy state of ceasefire that is decades away from meaningful reconciliation. The competing capitals of Belgrade and Pristina heartily contest each other's historic right to govern Kosovo, but they can barely be brought to discuss "technical issues," such as license plates or common telephone networks. The international community is equally divided over Kosovo's fate. If the local stakeholders cannot be guided, against great odds, to an agreement, Russia and China will probably block any attempt by the UN Security Council to impose a solution that would potentially threaten their own claims of sovereignty in Chechnya and Taiwan, respectively. But the *status quo* will not hold, and Kosovo's myriad political, social and economic problems will not sort themselves out. The massive civil unrest of March 2004 that left 19 dead and over 4,000 newly homeless across Kosovo challenged the international community's assumption that the province could be left on a low simmer while its institutions matured and its inhabitants reconciled. Without a political horizon, the province will remain highly unstable, and the international community is probably justified in committing to a status process this year.

This year's talks are likely to extend two strands of discourse that have dominated the discussion of Kosovo's future since 1999. One is the legal force of sovereign states' rights, according to which Serbia enjoys a strong presumptive claim to keep Kosovo. The international system is built on the assumptions that state borders are generally inviolable and that sovereign governments exercise wide prerogatives within them. Weak states undermine international security. The other main strand of Kosovo discourse explores the security consequences of implementing particular status scenarios. The bulk of the recent policy literature contemplates a range of status scenarios and draws geo-political morals from the possible outcomes.² Dominoes tend to be the key metaphor. As incisive as these studies tend to be, both the legal and the security-centric approaches are doomed to generate much discussion but to accomplish little because they depart from the middle, rather than the beginning, of the Kosovo question. In order to sort through the stakeholders' conflicting claims to statehood in Kosovo, the theoretical foundations of statehood itself ought first to be made clear. Once the general characteristics of a viable polity have been laid out, the stakeholders' particular visions of statehood can be measured against them.

There is a strong theoretical case to be made that a state's rights are contingent on the state's fulfilling its constitutive obligations. Simply put, there are no state's rights if the sovereign power has withdrawn its commitment to the very obligations that underwrite the state's existence. Any evaluation of Serbia's legal argument for retaining Kosovo must begin with an assessment of its commitment to the state's constitutive obligations throughout the whole of its territory, including Kosovo. There is a strong empirical case to be made that Serbia has alienated its right to rule Kosovo through willful, protracted abuse of such obligations. It is also evident that post-Milošević Serbia cannot or will not take the necessary steps to cultivate trust among its Albanian citizens in Kosovo, undermining the possibility of

Belgrade's renewed governance there. The purpose of this paper is to present *prima facie* arguments for each of these theses.

The Social Contract and the State's Monopoly on Violence

Modern constitutional states base their authority to govern on an implicit social contract. The main elements of the contract are (1) the state's commitment to regulate economic competition, for which purpose it reserves an executive monopoly on the use of coercion, and (2) the governed individuals' collective, voluntary subordination to the state. The contractual relationship is multi-faceted. Individuals agree among one another to join their fates within a rule-bound community and, in so doing, mutually to respect the state's authority. The state, for its part, commits to govern fairly. By this formula individuals give up the unregulated competition for economic resources in exchange for the law-based mitigation of risk and the fairest possible distribution of benefits.³

The essential dynamic running through the contractual relationship is trust. Ungoverned individuals must trust one another to commit equally to collective subordination. Trust is also essential to the individual's calculation that the state's mode of governance will deliver the basic guarantees of security and property rights. In a well governed polity, trust perpetuates a virtuous circle: the more trust the state's sovereign authority cultivates through good governance, the more trustful the governed become among themselves and toward the sovereign. Transaction costs are driven downward as economic actors come to rely less and less on coercive, institutional guarantees of fairness, and economic life flourishes.⁴ The capacity for trust is encoded in rational individuals as a pre-political recognition of human worth. Because contracting individuals share a sufficiently common vision of what humans deserve at a minimum—security and a fair opportunity to earn and retain property—they are able to trust one another within reasonable bounds to submit mutually to the institutions that safeguard these basic deserts.⁵

In the postulated state of nature—an imagined world without governance—unregulated violence is a fact of life. The strong subjugate the weak, and power shifts unpredictably as alliances of interest form and dissolve. It is, to paraphrase Hobbes, an enervating chaos of constant attack and defense. Modern social contract theory begins with the postulate, borrowed from the state of nature, that coercion is the ultimate arbiter of power, property, and conduct. Rational actors will try to get away with whatever they perceive will benefit them if there is no power to check their ambitions. This model of action, however, stunts social cooperation and the economic benefits of scale it offers. Contracting individuals establish the possibility of cooperation, and with it, greater prosperity, by alienating their broad “natural” right to employ coercive force and agreeing that a supervening body, the state, will reserve and regulate its use. The mutuality of this voluntary alienation underwrites the trust citizens place in the state's coercive institutions. Modern police and courts act as the public's trusted agents in threatening coercion to deter crime and applying punitive solutions when deterrence fails. Vigilantism is not tolerated in a modern polity because it transgresses the line between the state's legitimate use of coercive force

and the Hobbseian state of nature, in which individuals kill on their own prerogative. In effect, the state, as sovereign, reserves a monopoly on the use of violence.⁶

The sovereign's commitment to use its monopoly on violence wisely, accountably, and exclusively for the common good stands at the foundation of the contract by which states are formed. It is, in this sense, constitutive of the state itself. The proper use of coercion, up to and including violent force, is among the state's most basic obligations. Most western states hold the proper use of violence as such a sacred principle, they have, paradoxically, made it mundane; it permeates the fabric of decent governance to the point that it has become unremarkable. This sacredness is the reason modern states divide the responsibilities of defense and law enforcement: the use of force against one's own citizens requires diligence that an army is not institutionally structured to exercise. It is also why the state concentrates intellectual capital in its judiciary and subjects the use of violent force to constant legal review. The use of violent force is the most drastic measure the state must take in guaranteeing the common good, and any state that fails grossly in its use nullifies the contract that legitimizes its authority to govern.

Between March 1998⁷ and June 1999, the Federal Republic of Yugoslavia and its constituent Republic of Serbia flagrantly abused their (joint) monopoly on the use of violence in the province of Kosovo. In the course of a counter-insurgency campaign, their soldiers and police applied excessive force to targets of questionable validity and failed utterly—and probably willfully⁸—to distinguish combatants from non-combatants. The bulk of the evidence suggests that the FRY and Serbian governments tolerated gross human rights abuses of minorities by their troops and police in Kosovo (Independent International Commission on Kosovo 2000: 91). Ultimately Belgrade used the counter-insurgency campaign as a pretext for displacing more than a million of its own citizens.⁹ In so doing, Belgrade defaulted decisively on its commitment to guarantee security and property rights in Kosovo, destroying even the fiction of a social contract there. The 1999 intervention by NATO reflected an international consensus that Serbia had faltered in its governance of Kosovo.

The legal instrument that brought the sovereignty of the FRY (and of Serbia) in Kosovo to a pause was UN Security Council Resolution 1244 of June 1999. It appears to suggest that Kosovo's citizens should be consulted in order to determine the province's future status,¹⁰ but also to provide that the FRY's "territorial integrity" would not be violated in the process. This political ambiguity reflects a deeper philosophical assumption that the social contract, once ruptured, may either be revived by inviting Belgrade to exercise sovereignty again, or dissolved, in which case the people of Kosovo would presumably decide the modalities of a new contract. If it is the case that a ruptured social contract is *ipso facto* dissolved, Pristina has a strong claim against Belgrade's right to rule Kosovo. By rendering the future sovereignty issue ambiguous, however, the powers that brought Belgrade's rule in Kosovo to a pause have obliged themselves to hear arguments over the revivability of the contract. The fundamental question of who may rightfully contract for the governance of Kosovo logically precedes the issues of state's rights and security concerns. Without a philosophically sound

answer to the question — *who deserves Kosovo ?* — legal arguments may be baseless, or imperfect justice may widen or intensify the conflict.

The Ruptured Contract's Status

Contracts are said to be made between persons, because they are entered into voluntarily, and persons, in the broad philosophical sense, are the only bearers of will. Broadly construed persons can either be individuals or collectives, as enshrined in the legal convention of assigning personhood to corporate bodies such as businesses and states. The parties to the social contract are such broadly construed persons. Individuals congregate as a governable body, and the state constitutes as a government personified in a sovereign power.

Some proponents of Serbian rule in Kosovo reserve the objection that Milošević, not Serbia, repressed Kosovo, so there was no malfeasance, strictly speaking, only massive but ordinary crime.¹¹ The argument supporting this objection is based in contractarian concepts. In a contract between person A and person B, if it can be shown that person B was wrongfully represented in the execution of his contractual obligations by person C, and that person B is now fit and committed to resume his contractual obligations, it follows there was never a rupture, only a (regrettable, temporary) usurpation of a contractual role. This is the schematic version of the argument, occasionally hinted at, that the Milošević regime was merely an aberrant criminal enterprise standing in for the sovereign but not duly endowed with sovereign authority. Now that a legitimate government is in power, the dormant contract can be revived unproblematically.

This argument is elegant but fatally disingenuous. It is also fallacious. In order to make the usurpation argument work, Belgrade must disavow an entire decade of Serbian Kosovo policy as the creation of a non-state actor. This claim is clearly incredible. It conflicts with the well documented fact that Milošević's repressive Kosovo policy was crafted within official state organs and rode a popular wave of Serbian approval. It also offends a widely held assumption among democratic states that legitimate governments answer for their failures as a means of avoiding them in the future. Germany's willing accountability for the Holocaust is the model of this principle. Even if it could be shown (as a highly counter-intuitive fact) that the governments of Serbia and Yugoslavia were not responsible for Milošević's actions, the argument would be a non-sequitur. It does not follow *prima facie* that usurpation of a contractual role does not entail rupture of a contract. Usurpation would appear in many situations to be excellent grounds for nullifying an agreement.

The proponent of Serbian rule must either produce a sound argument for non-rupture or make a positive case that the social contract can be revived. As noted above, the necessary pre-condition of the contractual process is trust between the collective to be governed and the governing power. If it hopes to revive its contract in Kosovo, the Government of Serbia must project trust-building policies sufficient to correct a significant trust deficit. Over ninety per cent of Kosovo's inhabitants reject Belgrade as an

untrustworthy sovereign. Rather than acknowledging this gap and working to bridge it, however, the Government of Serbia continues to reduce the prospects for trust. Its policy failures in this regard run wide and deep; the lens of social contract theory refracts them into distinct tracks. First, Belgrade has never reversed its fundamental policy decision to treat Kosovo's majority as more worthy of alienation than integration. It has also failed decisively to tell the truth about the Kosovo conflict, raising legitimate worries that it will replay its transgressions there. And finally, the current Government of Serbia demonstrably lacks the political imagination to envisage its writ as anything broader than the same system of ethnic clientelism that has driven the province toward the current state of conflict since 1912.

The Possibility of Repair: An Empirical Assessment

The modern history of Belgrade's rule in Kosovo is grim. Its twentieth-century span is book-ended by extended episodes of official violent repression, from 1912 to 1919 and from 1998 to 1999; marked by elaborate colonization programs aimed at restoring the Serbs' medieval majority status; and institutionalized by a series of flawed constitutions that implicitly identified Kosovo's majority as second class citizens. Serbia founded its modern state on a decision to treat its Albanian community as more worthy of alienation than integration. Belgrade's governance of Kosovo from 1912 to 1999 and its current Kosovo policies show in both word and deed that it has not, up to the present day, reversed this basic decision.

Serbian forces occupied the territory of Kosovo in 1912, burning Albanian villages from the Kosovo border to Pristina (Malcolm 1999: 251) and failing to notice, as Banac (1984: 292) has drolly put it, that there were hardly any Serbs left in the land they called "Old Serbia." The liberation was actually a horrific military occupation, (296) in which the Serbian army punished Kosovo's Albanians for having sided with the Ottomans (Vickers 1998: 78). The Serbs' attempt to subdue Kosovo's Albanians between 1912 and 1919 resulted in a wave of Albanian militancy and protracted low-intensity conflict that ebbed and flowed throughout the 20th century. The early violence reached a peak in the winter of 1918-1919, when the Serbian army rampaged through several villages of western Kosovo, laying waste to more than 900 houses and killing hundreds of civilians (Banac 1984: 298).

The military campaigns in Kosovo were augmented and followed by elaborate attempts at colonization, which together advanced the official Serbian policy of assimilating or expelling Kosovo's Albanians (Banac 1984:298). Far from keeping such dark intentions secret, Serbian officials and intellectuals went on the public record often and at length to articulate the state's desire to alienate its Albanian minority (Malcolm 1999: 268, 280, 283; Banac 1984: 298). An official Serbian report on the agrarian reform of the mid-1930s states plainly that the policy of limiting Albanian landholdings was aimed at reducing their demographic presence: "This [maximum Albanian land parcel] is below the minimum needed for survival. But that was precisely what we wanted; that is, to prevent them from living and thereby force them to emigrate" (Banac 1984: 301). The architects of

colonization wrote detailed memoirs of their efforts at anti-Albanian demographic engineering (Vickers 1998: 107, 116),¹³ and two official decrees on colonization stand as eminent subjects of the public record.¹⁴

In all, Serbia attempted two, arguably three, colonization programs in Kosovo between 1912 and 1999. The first, which spanned the years from 1918 to 1928 (105), achieved mixed success from Belgrade's perspective. Tax and property incentives for Serbs to move to Kosovo produced a measurable demographic change in Kosovo's cities by 1929, but the province's overall ethnic balance remained roughly 60% Albanian, 35% Serb. Vasa Čubrilović, the architect the second Kosovo colonization program, concluded from the first program's shortfalls that a passive schedule of incentives for Serbs and disincentives for Albanians was not sufficient to effect the desired shift in demographics. Serbia's new objective would be the active, organized "mass emigration" of Albanians from Kosovo (Malcolm 1999: 284). During the second program, from 1929 to 1941, Belgrade pursued twin policies of "Turkifying" its Albanian citizens through language education and encouraging their mass transfer to what was defined as their "natural" homeland, Turkey. Although the plan fell well short of its targets, the 1935 Belgrade-Istanbul agreement to transfer 200,000 Albanians is a lasting testament to its ambitious nationalist goals. The FRY government's Yugoslav Program on Kosovo, which lasted from 1990 until Serbia's pullout in 1999, arguably constituted a third colonization effort, although unlike its predecessors, it was not named as such by official decree. Under the Yugoslav Program's terms, Serbs were given new apartments and tax benefits and unduly compensated for administrative jobs in Kosovo. The Milošević "crisis administration" of the 1990s eased this effort along by summarily relieving several thousand Albanians of jobs subsequently filled by Serbs (Vickers 1998: 245).

The Albanians' constitutional status under socialist Yugoslavia formalized their truncated relationship with the state. The arcane Titoist system of ethno-civic terminology encoded ethnic communities with rights and liberties derived from their "rightful" homes of origin. *Nations* had their proper guardians of benefits in their respective Yugoslav republics. The Serbs had Serbia, the Croats had Croatia, and so forth. In principle, the republics reserved the right to secede from the Yugoslav federation, as constituent units of a federated state. However, those members of *nationalities* who had homelands outside Yugoslavia's borders were effectively denied the right to self-determination and a full schedule of other civic benefits. As a nationality under the Titoist system, the Albanians were implicitly defined as second-class citizens. Their nation-state and, by implication, their "natural homeland," was Albania. Farcically, this implied that Tirana was the proper guarantor of the Yugoslav Albanians' most basic rights and liberties, despite the glaring political reality that Albania's sovereignty did not extend to its co-nationals in Yugoslavia. An Albanian's choice to remain in Yugoslavia was implicitly a choice to accept second class citizenship or emigrate. Or, in Paijic's terms, it was an acceptance of one's status as a "historic guest," invited to remain, but only at the pleasure of Yugoslavia's "hosts," the nations (Mertus 1999: 288).

The Albanians' poor record of integration within a state purportedly guided by "brotherhood and unity" eventually shamed the Tito government, for a short while, into improving the Albanians' situation. In the late 1960s and early 1970s, Tito made a handful of upgrades to the civil status of Yugoslavia's Albanians', lightening the repressive police presence in Kosovo and allowing the unrestricted printing of Albanian-language books. These measures stimulated greater self-assertion within the Albanian community, but ultimately only served to mitigate the marginal effects of the Yugoslav state's decision to withhold a full social contract from its citizens. They did not reverse the state's fundamental decision to treat its Albanian community as more worthy of alienation than integration.

The Albanians' share of state-protected rights and liberties reached its high-water mark with the 1974 Yugoslav constitution, attaining all the attributes of full citizenship, but without delivering a fundamental change in their status of nationality. The initial Serbian objections to the 1974 constitution and the developments of the 1980s and 1990s in Kosovo were to show how fleeting first-class civil rights could be if bestowed *ad hoc* on second-class citizens, against the wishes of the state's first-class citizens and political elite.

After Tito's death in 1980, the Yugoslav political system in general, and the SFRY presidency in particular, drifted into a "pattern of inertia" (Crnobrnja 1994: 83). Despite the apparent calm, the country was approaching the boiling point of ethnic separatism and economic collapse, but the country's politicians, eager to maintain the fiction that Tito's death had not left a leadership vacuum, were determined to gloss over the factors of instability. "Nobody wanted to rock the boat," according to Crnobrnja (82). In March of 1981 Kosovo's Albanians presented the first serious challenge to the uneasy stability of post-Tito Yugoslavia. Two thousand students demonstrated over poor living conditions at Pristina University, provoking hundreds of arrests and touching off a series of large, violent demonstrations throughout Kosovo. The demonstrations quickly took on the most political of dimensions. Kosovo's Albanians demanded republican status and with it, the right to self-determination.

In response to the riots, Belgrade began incrementally to reverse Tito's Albanian-friendly policies. The Serbian and Yugoslav governments steadily removed the legal guarantees of Kosovo's limited autonomy, eventually annulling significant portions of the 1974 constitution. In response to Serbian agitation in Kosovo (largely orchestrated by Milošević), Belgrade imposed an emergency administration in 1990, which deprived the province's Albanians of numerous common rights and liberties. The Serbian emergency administration peremptorily halted broadcast media in the Albanian language (Vickers 1998: 245), fired senior editors of the Albanian daily *Rilindja*, and replaced over 1,000 Albanian media-sector staff with Serbs (246). Albanian medical staff, school teachers, and university professors were also fired *en masse* and replaced by Serbs. Security forces squelched the right to public assembly, disregarding the distinction between peaceful and violent gatherings (224, 242). The state's summary use of administrative, legal and coercive power against the Albanian community amounted to the deliberate oppression of its own citizens.

The FRY's and Serbia's use of indiscriminate violent force on their own citizens in the late 1990s demonstrated a decisive commitment to the policy of alienating Serbia's Albanian community. When fighting began to escalate in 1998 between the nascent Kosovo Liberation Army and the FRY and Serbian security forces, Belgrade resumed the repressive methods by which it conducted the 1912 liberation of Kosovo, the 1918 reoccupation, and the 1946 suppression of the Drenica Valley—applying indiscriminate military force to targets of questionable validity, including whole villages of non-combatants.¹⁵ Far from observing the military principles of proportionality and precision necessary to subdue an insurgent force, FRY and Serbian forces attacked and killed Serbia's own citizens indiscriminately and in large numbers.¹⁶ The 1998-1999 counter-insurgency campaign constituted a gross, deliberate violation of the state's obligation to apply the highest diligence to its use of coercive force against its own citizens. Despite the overwhelming record of evidence to this effect, the current Government of Serbia, and many commentators in Belgrade, hold dramatically different opinions regarding the current situation in Kosovo.

Belgrade's own understanding of the Kosovo narrative since 1999 casts serious doubt on its ability to adjust policy. To hear the Serb side of the Kosovo story today—rendered in press interviews, on government Web pages¹⁷ and publications of the Serbian Orthodox Church—there is, strangely, no conflict to speak of, only unmotivated repression and inexplicable fear. Rather than spinning the strands of recent history into a narrative that is somehow consistent with the record of ethnic antagonism in Kosovo, Belgrade simply presents Serb suffering and Albanian terror as two co-existing but logically unrelated facts. Early and mid twentieth century Serbian policy on Kosovo was at least honest in its acknowledgment (and promotion) of conflict. The current administration's refusal to countenance hard truths about Kosovo seems, by comparison, disturbingly out of joint with reality. This is not to say there are not elements of truth in Serbia's current Kosovo narrative; in fact, its spokespersons show a mastery of extracting from isolated facts a plausibility they transfer onto otherwise jarring incredible characterizations of the situation in Kosovo.

The Serbian Orthodox Church's "Post War Human Rights Abuses against the Serbs and Other Non-Albanians in Kosovo" and "Crucified Kosovo" are signal examples of this exercise in plausibility-transfer. The former is a catalogue of Albanian violence directed at Serbs since the 1999 conflict. It mixes faithful, corroborated reports of attacks on Serbs with broad defamations of the Albanian community and dark speculation about the political sponsors of Albanian terrorism. "Crucified Kosovo" documents the destruction of Serbian churches, monasteries, and cemeteries in Kosovo since 1999, with extensive photographic evidence. Both publications allege international complicity in Albanian violence, and both are widely accepted in Serbia as fair and accurate. Only through the collusion of the great powers and the implacably violent Albanians, the Church's narrative suggests, could such heinous events, as have happened since 1999, have befallen Kosovo's Serbs. These fresh catastrophes have simply hit the Serbian nation out of the blue, fitting neatly with a predominant view among Serb nationalists that they are doomed to suffer historically unwarranted misfortunes.¹⁸

This appraisal of the situation is not merely the phantasma of a traumatized Serbian public's imagination; nor is it limited to a pandering press or unofficial commentators such as the Church. The 2004 Government of Serbia's *Plan for the political solution to the situation in Kosovo and Metohija* consecrates the ahistorical view of the Kosovo situation by weaving it into policy. The *Plan*—which provides for the administrative separation of the Albanian and Serbian communities in Kosovo as the least objectionable means of stopping the Serbs' suffering and exodus—utterly fails to account for the grounds of the conflict. The language of the *Plan*, approved by the Serbian Parliament in March 2004, institutionalizes the message that inexplicable Albanian violence is at the heart of the problem: “The most pronounced manifestation of [ethnic hatred in Kosovo] is the extreme animosity of ethnic Albanians, who make up a majority of the Kosovo population, towards the Kosovo Serbs, hardly one-third of whom remained in the province after it was placed under the U.N. authority in June 1999” (Government of Serbia 2004). Blind as it is to history before June 1999, the *Plan* can advance no agenda for reconciliation or ethnic integration.

The main problem posed by Belgrade's distinct unwillingness to tell the whole truth about Kosovo is that it derails the possibility of trust between the citizens and the state. If no policy mistakes were made in Kosovo—only the uncaused suffering of Serbs and the unexplained fact of Albanian terror—there is, in principle, no political safeguard against repeating the 1998-1999 violence or resuming the Albanian-alienating policies of 1912 to 1999.

The idea of post-conflict truth commissions makes an instructive point about Belgrade's (and Pristina's) unhelpful reticence on the conflict. A central aim of truth commissions is to air competing narratives about a conflict and in so doing clear the slate so that a new, mutually acceptable phase of the narrative may begin. By stipulating in advance there will be no legal consequences for telling the truth, divergent narratives are aligned and the grounds for trust restored. There is, however, no truth commission for Kosovo, and the Government of Serbia fears any confessions it makes will have legal consequences for its citizens accused of war crimes. It probably also fears that a frank recounting of the facts would deflate its bid to rule Kosovo in the upcoming status talks. Pristina, for its part, refuses to tarnish the image of the heroes of its liberation and it will not contemplate the admission of any wrongdoing for fear it will cast doubt on the legitimacy of its liberation struggle. And so communication between Belgrade and Pristina is systematically distorted.¹⁹ Each side locks the other into a disingenuous version of the narrative because neither will take the risk of committing first to tell the whole truth. Trust between the discussants appears unlikely in the near term, and reconciliation remains a distant dream.

The Government of Serbia's ethnically skewed approach to Kosovo has been brought into sharp focus by recent events having to do with the province's electric power supply. In July 2004, the internationally managed Kosovo Energy Corporation (KEK), which operates the province's electric power grid, began to implement an ethnically-neutral, business-driven policy of repairing nodes of Kosovo's rickety power grid, contingent on end users repaying a fraction of their arrears and committing to a schedule of total

repayment. Many Kosovars, of all ethnicities, have not paid their electricity bills in several years according to KEK, resulting in a total revenue shortfall of approximately €190 million (Institute of War and Peace Reporting 2005). The resulting mid-winter power disruptions of 2004 have adversely affected thousands of Kosovars, including whole villages and city blocks whose end users cannot or will not pay. The Government of Serbia has reacted by characterizing the power disruptions as a deliberate means of pressuring Kosovo's remaining Serbs to leave the province, despite overwhelming evidence that the outages affect far more Albanians than Serbs. The disruptions are neither deliberate nor targeted. The KEK policy in question is not to cut functioning portions of the power grid, but to withdraw its commitment to maintain portions whose users have apparently withdrawn their commitment to pay an agreed price for power. The grid failures happen at random, and actual power losses reflect this fact. According to a recent recounting of outages in Kosovo, 134 affected Albanian-dominated areas, and six affected Serb areas (Institute of War and Peace Reporting 2005).

The Government of Serbia's decision to misrepresent the power situation in Kosovo is not news. Nor is its decision to pressure Kosovo's Serbs to refuse to sign repayment contracts (Institute of War and Peace Reporting 2005), thereby protracting human misery in the service of a political point. The clearest signal resonating from Belgrade's noise on electricity is that it does not even pretend to envisage a civic identity under which all the state's inhabitants would deserve equal protection and benefits. Basic guarantees of security and opportunity are to be meted out on an ethnic basis, just as they always have been in the Yugoslav model. Although the Government of Serbia has characterized the parlous power situation in Kosovo as a humanitarian crisis, it has intervened only on behalf of its *ethnic clients*, not on behalf of all its citizens. This decision is consistent with similar Serbian policies of paying pensions and other social benefits only to Kosovo's Serbs. The Government of Serbia demonstrably lacks the will and political imagination required to exert governing authority, should it be restored, equitably and fairly over Kosovo's citizens.

Conclusions

The current competition for legitimacy in Kosovo has been aptly described as a race to project the sort of trust necessary for fair governance: "A final status process should move the sovereignty issue between the Kosovo Albanians and Serbia entirely to this question: which of the two projects greater capacity and will to govern and protect all Kosovo's inhabitants?" (ICG 2005: 7). The Government of Serbia has, by its continued, explicit commitment to ethnic clientelism, disqualified itself from the competition. It does not deserve to govern Kosovo, even nominally. The social contract that underwrote Serbia's authority in Kosovo has been ruptured, and the government's failure even to begin to restore trust has made the rupture permanent. That Kosovo's inhabitants will be able to formulate a civic contract on their own and base fair governance on its principles does not, however, follow from the conclusion that Belgrade cannot. Kosovo will need international mentoring, and perhaps the continued

exercise of international sovereignty in certain areas, for decades to come. This is not an obstacle in principle. Kosovo's leading officials have uniformly committed to the partial transfer of sovereignty to Brussels entailed by Euro-Atlantic integration. It may be objected that my theses ignore the "Albanian" side of the Kosovo situation, particularly whether Kosovo's citizens and institutions can pass the same social contract test that Belgrade has so clearly failed. In short, *can Kosovo rule itself fairly?* My aim has not been to explore that question—which *does* demand serious attention—but only to argue that official Belgrade does not deserve a role in formulating it. The final formula for apportioning sovereignty in Kosovo will balance Pristina's interests not with Belgrade's, but with the imperatives of the international community. The balance to be achieved by that apportionment is still an open question.

Political realists may submit that by denigrating Serbia's claim to Kosovo based on the history of its conquest and rule there, I raise unwelcome questions about the legitimacy of conquering powers throughout history. Many such powers, not least America, have established decent, democratic rule on territories taken by conquest. I would reply that the proliferation of unwelcome questions has no bearing on the validity of my arguments. My conclusions will stand or fall on the evidence, not on their political digestibility. More to the point, even the critic troubled by such questions will acknowledge that Serbia decidedly does not fall into that problematic category of conquering powers that have succeeded in entrenching post-conquest systems of governance widely judged to be humane, fair, or generally more beneficial than the systems they displaced.

Finally, my postulation of the Rawlsian social contract as the proper foundation of legitimate governance may be criticized as narrow, idealistic, or even idiosyncratic. Ultimately, my position is that the Rawlsian contract is the best, but not the only, such foundation, and my critique of Belgrade does not rest on Rawls' exclusive claim to the metaphysical facts about social contracts. Rawls' theoretical competitors, notably utilitarian social contract models, would spotlight Serbia's alienation of Kosovo from a different perspective, but the light would be just as harsh.

Endnotes:

- ¹ Both the constitution of the Republic of Serbia and of the Federal Republic of Yugoslavia (FRY)'s successor state, the State Union of Serbia and Montenegro, refer to Kosovo as an integral part of Serbia.
- ² See, for example, U.S. Institute of Peace (2003 and 2002), Center for Strategic and International Studies (2002), and International Crisis Group (2002). International Crisis Group (2003 and 2005) are exceptional in exploring the social and philosophical problems that underlie Kosovo's legal and security issues.
- ³ I follow Rawls' (1984) recapitulation of modern social contract theory. The original insights on the elements of the social contract are those of Hobbes (1651).
- ⁴ See Fukuyama (1995), especially chapters three and 13, for full development of this argument.

- ⁵ Although Rawls does not treat interpersonal trust as a distinct topic, I derive this observation from his arguments on interpersonal symmetry (1984: 118-123), mutual respect of institutions (156-157), and primary human goods (380-381).
- ⁶ See Rawls (1984: 211) on the indispensable role of state-regulated coercion in the social contract. Also see Borradori's (2003: 102, 164-165) discussions of Benjamin (1978) for insight into the state's prerogative to use coercive force as a guarantor of the rule of law.
- ⁷ This date, borrowed from Daalder and O'Hanlon (2000: 22), was chosen for its expedient precision. Arguably, FRY and Serbian security forces were repressing Kosovo's citizens long before March 1998, but it was only after that date that Belgrade began to focus military power on insurgent and civilian targets.
- ⁸ Serbian forces and their paramilitary proxies have a well documented history of targeting non-combatants in Bosnia-Herzegovina and Croatia during the wars of 1991-1995, an outcome that U.S. officials wished to avoid in Kosovo by intervening early, according to Daalder and O'Hanlon (2000: 24, 28).
- ⁹ See especially Independent International Commission on Kosovo (88-91) for a discussion of the total number of displaced persons and the FRY's and Serbia's level of culpability for the expulsions and associated violence.
- ¹⁰ This provision of UNSCR 1244 is itself ambiguous. It does not appear literally in the resolution's text, but most Kosovars and many observers infer it from 1244's reference to the March 1999 Rambouillet Agreement. According to the agreement, Kosovo's inhabitants would choose a final political status in a referendum to be held three years after the establishment of an international protectorate.
- ¹¹ Official proponents of Serbian rule generally refrain from making pro-sovereignty arguments, as not to invite an unwelcome burden of proof. To argue, on the Government of Serbia's view, is to open a non-question. Even to attribute the violence in Kosovo to Milošević is to acknowledge a history of conflict that Belgrade's current ahistorical narrative of Serb suffering does not emphasize.
- ¹³ Vickers' analysis of the first colonization program draws heavily on the observations and self-reported policy decisions of the program's chief executor, then Chief Agrarian Commissioner Đorđe Krstović. Krstović recorded a detailed assessment of the program in *The Colonization of Southern Serbia* (Sarajevo, 1928). The signal contribution of the second colonization program's architect, Vasa Čubrilović, is simply titled 'The Expulsion of the Albanians'.
- ¹⁴ See Vickers (1998: 105-106) on the 1920 Decree on the Colonization of Southern Regions of Yugoslavia and the 1931 Law on Colonization of the Southern Regions.
- ¹⁵ See Daalder and O'Hanlon (2000: 22-23, 40-43, and 108-115) for details on the phases of FRY and Serbian security operations in Kosovo. The FRY/Serbian operations in Kosovo may usefully be divided into three phases. From roughly 1989 to February 27, 1998, the police repressed Kosovo's Albanians using intimidation but relatively little violence. The second phase, which ran from February 28, 1998 to March 23, 1999, involved the measured, incremental application of military force by the police, army, and paramilitaries. See Daalder and O'Hanlon (43) for a Serbian diplomat's September 1998 quip that the conquest of only "a village a day" would advance Belgrade's objectives while keeping NATO suitably pacified. The third phase, conducted beneath the fog of NATO's air war on Serbia, was the deliberate application of military force on, and the mass expulsion of Kosovo's Albanians. In this phase, security forces evidently committed atrocities with the aim of compelling large numbers of Albanians to flee.

- ¹⁶ Estimates range from 10,000 to 20,000 killed by the Yugoslav and Serbian forces. Daalder and O'Hanlon (110) settle on the lower end of this range. See Independent International Commission on Kosovo (2000: 82-83) for a discussion of the difficulties of verifying the numbers of non-combatants killed. The Commission acknowledges in particular that it was "unable to identify any dependable figure on killings between September 1998 and March 1999, despite the substantial OSCE monitoring presence during most of these months."
- ¹⁷ See especially The Government of Serbia (2005).
- ¹⁸ See Anzulovic (1999) for a sustained, if somewhat controversial, development of this observation.
- ¹⁹ The operant concept of distorted communication is fully developed in Habermas (1981).

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