Equal Citizens, Uneven ‘Communities’

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Equal citizens, uneven 'communities': differentiated and hierarchical citizenship in Kosovo

Gëzim Krasniqi, University of Edinburgh[1]

Abstract

This paper uses the case of citizenship in Kosovo to show how despite the constitutionally and legally enshrined promise of equality, differentiated citizenship together with a political context defined by an ethnic divide and past structural inequalities, as well as uneven external citizenship opportunities, contributed to the emergence of hierarchical citizenship, where some groups (communities), or 'rights-and-duty-bearing units', are 'more equal than the others'. The paper argues that the hierarchy exists not only between the core or dominant community (Albanians) and the non-dominant communities, but between the latter as well.

Keywords: citizenship, unevenness, group-differentiated rights, hierarchy, communities, Kosovo

1. Introduction

In recent times, international actors (states, organisations and agencies) involved in state-building and post-conflict reconstruction exhibit a growing tendency to promote group-differentiated rights and multicultural citizenship as a solution to the issue of ethnic, religious and linguistic minorities and diaspora integration. In part, this is due to the fact that the concept of group-differentiated rights is often seen as a panacea for conflict-ridden multi-ethnic societies and states, such as the ones in the post-communist Balkans. However, despite the promise of achieving equality, functionality and prosperity within the newly created 'liberal and democratic' states, the international community's approach to state-building in the Balkans - the citizenship models applied there, and the interplay between local and external agents - has resulted in a cluster of weak and internally divided states and societies. Moreover, in some cases, the application of group-differentiated rights in fragmented and divided societies has perpetuated ethnic differences and increased group inequalities rather than contributing to achieving equality for previously disadvantaged groups.

This paper uses the case of citizenship in Kosovo to show how despite the constitutionally and legally enshrined promise of equality, differentiated citizenship together with a political context defined by an ethnic divide and past structural

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inequalities, as well as uneven external citizenship opportunities, contributed to the emergence of hierarchical citizenship, where some groups (communities), or 'rights-and-duty-bearing units', are 'more equal than the others'. This paper addresses the situation in which the formal equality of citizens and communities is contradicted by the socio-political reality where some communities are better off, thus leading to the emergence of a hierarchy of communities in Kosovo. The paper argues that the hierarchy exists not only between the core or dominant community (Albanians) and the non-dominant communities, but between the latter as well. Despite the legally enshrined principle of equality, some communities in Kosovo form the core of the polity and society, while others remain in semi-periphery or periphery.

2. Citizenship and diversity: re-evaluating the conceptual link between citizenship, state and nation

Despite the claim that liberalism[2] provides universal citizenship and the state is blind towards different particularities in terms of ethnicity, culture etc., various disadvantaged groups and minorities have continuously challenged the 'myth' of ethnic or cultural 'neutrality' of liberal citizenship, thus demanding a re-evaluation of the link between state, citizenship and their ethnic/cultural/national belonging. At a normative level, this has often been articulated as the struggle for "recognition of difference"[3] and "group differentiated citizenship and a heterogonous public".[4] By emphasising the limits of realising group claims through individual rights, this 'pluralist' approach to citizenship renounces the liberal 'universal' approach of considering cultural differences and group particularities as 'private', thus asking for recognition and representation of the group interests and rights.

Another strand of this 'pluralistic' approach to citizenship is articulated in the form of 'liberal multiculturalism', which rose in opposition to the established tradition of a "*process of majoritarian decision-making*"[5] (as Kymlicka puts it) and the "*benign neglect*"[6] of minority groups. It proposes a group-differentiated citizenship which is not a substitute for universal citizenship, but rather complementary to it. In short, proponents of differentiated citizenship - who advocate the incorporation of members of certain (cultural) groups not only as individuals but also as members of groups, their rights depending in part on this group membership catering to their

[2] Paul Magnette, *Citizenship: the history of an idea*. Translated by Katya Long (Colchester: ECRP Press, 2005), 167.
[3] Charles Taylor, "Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition* ed. Amy Gutman (Princeton and New Jersey: Princeton University Press, 1994), 38.
[4] Iris Marion Yung, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *Theorizing Citizenship* ed. Ronald Beiner (Albany: State University of New York Press, 1995), 184.
[5] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), 5.
[6] Ibid.

special needs - argue that it can be used as a tool for the advancement of an important principle of liberal democracy, that of equality.

Although group-differentiated rights and citizenship are informed by ideas about justice in current political philosophy, they often serve more mundane purposes like conflict resolution, management and organisational efficiency.[7] Nonetheless, despite the fact that in many cases group-differentiated and multicultural policies have proven to be a success in mitigating long-standing inequalities they may also promote ethnic conflict, create vested interests in group distinctions, exacerbate ethnic divisions, entrench inequality, thus raising a "dilemma of recognition".[8]

In practice, the demand of the non-dominant group for recognition and equality varies from a mere recognition of its status as a minority, to local-self-governance and political autonomy. However, due to the fact that "the politics of recognition and multicultural justice remain tied to the basic principles of political modernity: the idea and practice of a state representing the people in its threefold meaning of nation, citizenry and sovereign,"[9] in many cases when minority groups demand that their differences be acknowledged within the state in the form of autonomy, what they seek in essence is not inclusion but partial withdrawal or the right to opt out from the common citizenship.[10] Consequently, the end result may be an internally divided society and state, with various groups enjoying various degrees of rights and privileges within a pluralised differentiated citizenship.

As regards the concept of hierarchical citizenship, I draw on Stephen Castles' definition used to describe the global order that has emerged since the end of the Cold War, which is comprised of a hierarchy of states with varying levels of power, forming a hierarchical nation-state system. According to Castles, the varying power of states is reflected in a similar hierarchy of rights and freedoms of each state's peoples: hierarchical citizenship.[11] In a similar vein, Immanuel Wallerstein's world systems theory contains a three-level hierarchy: core, periphery, and semi-periphery.[12] Nonetheless, as will be shown in the following discussion, differentiated citizenship within the state level can be hierarchical as well. In that case, some groups form the core of the political system, whereas others are in semi-periphery and periphery.

However, differentiated citizenship does not always lead to hierarchical citizenship. Hierarchical citizenship results from institutionalised forms of

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[7] Frank De Zwart, "The dilemma of recognition: Administrative categories and cultural diversity", *Theory and Society* 34 (2005): 137-169, 142.

[8] Ibid, 137.

[9] Andreas Wimmer, *Nationalist Exclusion and Ethnic Conflict: Shadows of Modernity* (Cambridge: Cambridge University Press), 4.

[10] Magnette, *Citizenship: the history of an idea*, 168.

[11] Stephen Castles, "Hierarchical Citizenship in a World of Unequal Nation-States", *PS: Political Science & Politics*, 38 (2005): 689-692.

[12] Immanuel M. Wallerstein, *World-Systems Analysis: An Introduction* (Durham: Duke University Press, 2004).

differentiated citizenship combined with a reality on the ground that favours some groups more than the others. In particular, differences in the level of group/community protection and political representation become pertinent in those cases when there is a clear difference between the absolute equality of human rights laid down in legal instruments of the state and the social reality, where although many have certain rights on paper, they lack the opportunities and resources to actually enjoy these rights.

In what follows I look at the process of state-building and transformation in the Balkans in the aftermath of the fall of communism and the role of the international actors in the establishment of new citizenship regimes.

3. Post-communist state-building and transformation in the Balkans

In the early 1990s, after the fall of communism and the eruption of the Yugoslav crisis, many international actors, states and organisations alike, became directly involved in the events. A decade later, the United States and the Western Europe (commonly referred to as 'the West') were deeply involved in interventions across almost every region of the Balkans.[13] Post-communist Europe and Eurasia thus became "fertile ground for testing theories of democratisation, institutional design, interest group interaction, and identity politics that have been developed in other geographic contexts."[14] The international missions in Bosnia and Herzegovina (hereafter Bosnia), Kosovo and Macedonia viewed multiculturalism and multi-ethnicity as the recipe for healing the wounds of war and to help overcome interethnic divisions and cleavages; hence the predominant discourse revolving around the following buzzwords: 'coexistence', 'united in diversity', 'multi-ethnicity', 'peace and tolerance' etc.

It is important to note that the Yugoslav crisis evolved in a period characterised by the global diffusion of both a political discourse on multiculturalism and its codification into different international legal norms, mostly embodied in international declarations and conventions addressing minority rights.[15] As a result, minority rights standards were put very high on the agenda of the external state-builders. However, as observed by Susan Woodward, although the failure of the Yugoslav state and the subsequent wars had a complex but common cause, external actors varied among themselves and across the seven successor cases in their explanations for the state collapse and violence and, most importantly, in their

[13] Roger D. Petersen, *Western Intervention in the Balkans: the Strategic use of Emotion in Conflict* (Cambridge: Cambridge University Press, 2011), 107.

[14] Charles King, *Extreme Politics: Nationalism, Violence and the End of Eastern Europe* (Oxford, New York: Oxford University Press, 2010), 80.

[15] Will Kymlicka, *Multicultural Odysseys – Navigating the New international Politics of Diversity* (Oxford: Oxford University Press, 2007), 3.

solutions and related understandings of the state and state-building process.[16] While in the case of Slovenia and Croatia, the international community supported a Weberian model of state - establishing the new states' monopoly over the use of force within their claimed territories, in the case of Serbia and Montenegro the focus was on regime change. On the other hand, Bosnia, Kosovo and Macedonia represent prime sites of international intervention in the region.

In all these three cases, the new state model drafted by outsiders, either US and EU government lawyers or diplomats, with the goal of ending wars between the parties imposed a *fait accompli* of group and minority rights.[17] As a result of this imposition and lack of proper political input from local polities these countries represent cases of polities where "the political sphere has been colonized by external regulation".[18] By prioritising group-differentiating rights and perpetuating ethnicity as the main identity signifier, the internationally-drafted Dayton Peace Accords on Bosnia, Ohrid Framework Agreement in Macedonia, UN Security Council Resolution 1244, Constitutional Framework for Provisional Self-Government in Kosovo, Ahtisaari Plan and Kosovar Constitution encourage the use of ethnicity both in the constitutional settings and in the political relations in these countries.

The format of the "citizenship regime"[19] was at the heart of debates on the nature of the future states. As is the case with other legal and constitutional provisions in Bosnia, Macedonia and Kosovo, the international intervention has had a direct impact on the civic status of individuals and citizenship laws.[20] In line with the international community's predominant 'multicultural vision' and group-differentiated rights, the post-conflict citizenship regimes in Bosnia, Macedonia and Kosovo are based on the principle of multicultural citizenship and the decoupling of membership and identity. As a result, these three countries put in place multi-ethnic citizenship regimes, which mean that although all citizens are considered equal, the political practice involves consociational arrangements, ethnic voting and quotas, ethnic representation and vetoes.[21] While in the case of Bosnia, the citizenship regime established at Dayton in 1995 stands out for its bifurcated nature and the existence of

[16] Susan L. WOODWARD, "Varieties of State-Building in the Balkans: A Case for Shifting Focus", in: *Advancing Conflict Transformation. The Berghof Handbook II* eds. Martina FISCHER, Beatrix AUSTIN and Hans J. GIESSMANN (Opladen,Framington Hills: Barbara Budrich Publishers, 2011), 322.

[17] WOODWARD, "Varieties of State-Building in the Balkans", 324.

[18] David Chandler, *From Kosovo to Kabul. Human Rights and International Intervention* (London: Pluto Press, 2002), 203.

[19] According to Shaw and Štiks, "the concept encompasses a range of different legal statuses, viewed in their wider political context, which are central to the exercise of civil rights, political membership and – in many cases – full socio-economic membership in a particular territory." Jo Shaw and Igor Štiks, "Introduction: Citizenship in the New States of South Eastern Europe", *Citizenship Studies* 16: 3-4 (2012), 309-321.

[20] Ibid, 310.

[21] Ibid, 317.

a plurality of regimes and conceptions of citizenship,[22] Macedonia[23] and Kosovo have preserved their unitary character, but are decentralised on the principles of "ethno-majoritarianism".[24]

As regards the selection of the case, from the three post-Yugoslav cases that are characterised by a tension between civic and multi-ethnic elements in the constitutional setting and citizenship regime, namely Bosnia and Macedonia, I have chosen Kosovo for two reasons. First, Kosovo assigns the same legal status ('community') to all the constitutionally recognised ethnic groups. Second, the number of ethnic groups that are recognised in Kosovo and provided with specific group-differentiated rights is bigger. This, in turn, makes it possible examining the uneven manifestation of group-differentiated rights not only in the context of the majority-minority binary divide, but also within and between non-dominant communities.

4. Kosovo: multiple forms of uneven citizenship

Residents of the territory of Kosovo have been subject to various forms of hierarchical citizenship put in place by various states and regimes throughout the 20th century. The imperial Ottoman citizenship regime, the unitary citizenship of the royal Yugoslavia, the federal citizenship in the socialist Yugoslavia coupled with Serbian republican citizenship, and a nested quasi-citizenship regime in Kosovo (1974-1989), the new federal citizenship arrangement in the Federal Republic of Yugoslavia (1992 – 1999) all distinguished between various ethno-cultural or religious categories, be it *millets*, *nations, nationalities, ethnic groups* etc. Despite the fact that the UN Resolution 1244 mandated an ethnically integrated Kosovo, the latter was *de facto* partitioned along ethnic lines by default due to the passivity of the international administrators in the face of fierce resistance by local ethnic elites and their unwillingness to implement the integrationist elements of the peace arrangements.[25] This post-war *de facto* partition was soon institutionalised with the establishment of the UN-sponsored interim legal and political framework in Kosovo. The contours of Kosovo's new citizenship regimes were set up in the aftermath of the international intervention there and the adoption of the Constitutional Framework of Provisional Self-Governance in Kosovo in 2001, which introduced the term 'community' – meaning "inhabitants belonging to the same ethnic or religious or linguistic group" – instead of the more common term 'nation', 'ethnic group', or

[22] Eldar Sarajlić, "Conceptualising Citizenship Regime(s) in Post-Dayton Bosnia and Herzegovina", *Citizenship Studies* 16:3-4 (2012), 367-381.

[23] Ljubica Spaskovska, "The Fractured 'We' and the Ethno-National 'I': The Macedonian Citizenship Framework", *Citizenship Studies* 16:3-4 (2012), 383-396, 383.

[24] Carl T. Dahlman and Trent Williams, "Ethnic enclavisation and state formation in Kosovo", *Geopolitics*, 1557–3028, 15:2 (2010), 406–430.

[25] Erin K. Jenne, "The Paradox of Ethnic Partition: Lessons from de facto Partition in Bosnia and Kosovo", *Regional & Federal Studies*, 19:2 (2009), 273-289.

'majority' and 'minority'. In addition to the legally guaranteed equality of all communities, non-majority communities were guaranteed specific group rights, such as political representation, cultural rights and quotas in employment. The Ahtisaari Plan, as well as the Kosovar Constitution,[26] mirror this model of membership and political organisation established by the UN Mission in Kosovo.

Despite the fact that constitutionally Kosovo is defined as 'a state of its citizens'[27] (Article 1.2), meaning civic state, 'multi-ethnicity' is the keyword in both the Ahtisaari Plan and the Kosovan Constitution itself. If equality is established legally among all citizens, politically every citizen is defined as a member of a community. As in the UN drafted Constitutional Framework, in the Kosovar Constitution the term community refers to 'inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo' (Article 57.1 of the Constitution). All the constitutionally recognised communities in Kosovo are granted specific group-rights, including reserved seats in the parliament, at least two ministerial portfolios in the government, and proportional representation, as well as quotas, at other levels of governance. Thus, as I have argued elsewhere,[28] the new Kosovan Constitution on the one hand, by refusing to recognise exclusions, loyalties or claims of ancestral rights, not only defends the universalist values of civic republicanism and individual liberalism, but also speaks out for group rights (communities) and defends their exclusivity and group differentiated rights. Certainly, in the case of Kosovo we have de-ethnicisation of state institutions on the one hand, but on the other, a multi-ethnic composition of the society reflected in politics, i.e. ethnicisation. By being deeply inscribed in the experience of everyday life of ordinary people in Kosovo, ethnic categorisations at the same time define the social, political and geographical

[26] Although in the Constitution all ethnic groups regardless of their numbers are defined as 'communities', the Law on the Protection and Promotion of the Rights of Communities and their Members states that "For the purposes of this law, communities are defined as national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority. These groups are Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani and other communities. Members of the community in the majority in the Republic of Kosovo as a whole who are not in the majority in a given municipality shall also be entitled to enjoy the rights listed in this law." So although the prime aim of the law is to regulate the rights of the non-Albanian communities, it grants the same protection and rights to the latter in those cases when Albanians form a minority in a given municipality. See *Law 2008/03-L047.*

[27] Although in the Declaration of Independence, Kosovo was declared to be "to be a democratic, secular and **multi-ethnic republic** [my emphasis], guided by the principles of non-discrimination and equal protection under the law", the Kosovar Constitution (article 3.1.) stipulates that "The Republic of Kosovo is a **multi-ethnic society**" [my emphasis]. This way the constitution makes a distinction between the state which is 'civic' and society, which is 'multiethnic'.

[28] Gëzim Krasniqi, "Overlapping jurisdictions, disputed territory, unsettled state: the perplexing case of citizenship in Kosovo", *Citizenship Studies*, 16:3-4 (2012), 353-366.

boundaries in which individuals can operate and are reified by those experiences.[29] As a result, we have at the same time ethnically-blind civic state institutions, and yet the very functioning of the state is based on multi-ethnicity (the ethnically-blind state being there to ensure that no group will dominate or be discriminated against – at least not formally). Indeed, elements of multiculturalism and civic republicanism are melted together in the Kosovan legislation.

However, a closer examination of the Kosovar constitutional system and legislation shows that although all the communities within the Kosovan polity are formally equal before the law, citizenship rights assigned to each of the groups are uneven. This unevenness, in turn, combined with the present socio-political reality in Kosovo and the uneven external citizenship opportunities has resulted in the emergence of a hierarchical order of communities in Kosovo. This manifests in the sphere of political representation, local self-governance, and social and cultural rights, thus affecting different communities in different ways.

The citizenship hierarchy used to analyse Kosovo does not represent a static caste-like echelon of various groups in society or a strict constitutional pecking order of various differentiated communities or groups. Rather, it is a tool utilised to describe the present legal, social and political setting in Kosovo and the current position of different communities in that setting. Some of the key factors, or independent variables, that determine the present hierarchy of citizenship in Kosovo, and which will be analysed while looking at each of the communities, include: legal setting, external citizenship, historical legacies, demography, geographic position, (in)existence and role of the kin-state (external factors), relations with the core-group, political agency, and resources. Last but not least, discrepancy between the absolute equality of human rights laid down in the instruments of national law and the social and political reality is considered to be an important factor in determining the hierarchy of a group's rights. For even when people and groups have certain rights on paper, many lack the opportunities and resources to actually enjoy these rights.

Following Harris Mylonas,[30] I consider the interaction between the host state, non-core groups and external powers to be of particular importance in the process of state-building in Kosovo and accommodation of various communities within the new state. External actors, both in the form of individual states (kin-states or third parties) and international organisations were heavily involved in the process of shaping Kosovo's legal setting and continue to play a great role even today. As will be made evident in the later section discussing the position of various communities, the existence of an external power in general and a kin-state in particular, outweighs other factors such as size of population and political demands. Although the main focus is on the internal citizenship in Kosovo, the role of kin-state is analysed also in

[29] Nando Sigona, "Between Competing Imaginaries of Statehood: Roma, Ashkali and Egyptian (RAE) Leadership in Newly Independent Kosovo", *Journal of Ethnic and Migration Studies*, 38:8 (2012), 1213-1232, 1218.

[30] Harris Mylonas, *The Politics of Nation-Building: Making Co-Nationals, Refugees, and Minorities* (Cambridge: Cambridge University Press, 2012).

the context of 'external citizenship'[31] and the degree of rights and privileges granted by various kin-states in the region. In other words, I will also focus on the role and impact of the existing "citizenship constellations", defined by Bauböck as "structures in which individuals are simultaneously linked to several such political entities, so that their legal rights and duties are determined not only by one political authority, but by several."[32]

Thus, while looking at all these aspects mentioned here, I argue that despite the almost absolute equality of communities and citizens enshrined in Kosovo's legal and constitutional setting, in reality hierarchy prevails. As a result, some communities are more equal than the others. The present hierarchy of communities in Kosovo is drawn by distinguishing between core dominant[33] and non-dominant communities on the one hand, and semi-peripheral and peripheral communities on the other. Based on the present legal setting and socio-political situation, the order of groups in the hierarchy of citizenship is as follows: 1) Albanians - the core (dominant) community; 2) Serbs - the core non-dominant community; 3) Serbs from North Kosovo - the core of the 'core non-dominant' community; 4) Turks - the semi-peripheral community; 5) Gorani and Bosniaks[34] – the elusive peripheral communities; 6) Montenegrins and Croats – the unrecognised communities); 7) Roma, Egyptians and Ashkali (RAE) – the invisible communities.

As far as methodology is concerned, depictions and comparisons are made using Scheppele's approach of "constitutional ethnography", which involves the "study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal landscape."[35] In other words, the paper combines analyses of legal documents with interviews with various political leaders and civil society representatives in Kosovo. Rather than focusing on the legal setting alone, by examining the overall politico-legal context, this approach helps elucidate the overall legal and socio-political factors that determine the current position of each of the communities in Kosovo's political and social system and citizenship hierarchy.

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[31] External citizenship is understood as "a generic concept that refers to the status, rights and duties of all those who are temporarily or permanently outside the territory of a polity that recognizes them as members". Rainer Bauböck, "The Rights and Duties of External Citizenship", *Citizenship Studies*, 13:5 (2009), 475-499, 478.

[32] Rainer Bauböck, "Studying citizenship constellations. Journal of ethnic and migration studies", *Journal of Ethnic and Migration Studies*, 36:5 (2010), 847–859, 848.

[33] The distinction between dominant and non-dominant communities is based on the power relations between groups, not in terms of numerical representation, although in the case of Kosovo they correspond.

[34] It is worth noting that the English version of the Kosovan Constitution uses the ethnically neutral term 'Bosnian' instead of 'Bosniak' to refer to the part of Slavic speaking Muslim population that identifies itself with the Bosniak nation. On the other hand, the Serbian version of the constitution uses the term 'Bošnjak' (Bosniak). Nevertheless, I will be using the term 'Bosniak' instead of 'Bosnian' as this is the term the community identifies itself with.

[35] Kim L. Scheppele, "Constitutional Ethnography: An Introduction", *Law & Society Review* 38 (2004), n. 3, 389-406.

4.1. The core (dominant) community: Albanians

Kosovo is not defined as a national state of its titular nation, but as a multi-ethnic state of all citizens, guided by principles of non-discrimination and equal protection under the law of all communities, thus pre-empting the 'appropriation' of the state by a numerical absolute majority (i.e. Albanians) or the 'the tyranny of the majority'. Indeed, Kosovo represents a state with a complex governance structure based on a mixture of territorial and functional structures.[36] However, despite this, and the attempts to create a 'post-national state' where state membership and identity are, using Joppke's terminology, 'structurally decoupled', [37] one cannot neglect the fact that ethnic Albanians constitute the overwhelming majority of the Kosovar population.[38] As such, the Albanian community in Kosovo occupies a central place within the new state, including domination of central political and security institutions, as well as economic life in the new state, thus making it the core community. Despite the fact that the term Albanian figures only twice in the constitution (with reference to the Albanian community and language), the formulation in article 3.1 of the constitution – "The Republic of Kosovo is a multi-ethnic society consisting of **Albanian and other Communities** [my emphasis], governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions" singles out the Albanian community from the rest of communities living in Kosovo, at least in terms of the order.

As a result, other communities in Kosovo, in particular the Serb community and the state of Serbia, see Kosovo as an essentially 'Albanian state' with a civic and multi-ethnic façade. On the other hand, many Kosovan Albanians do not consider Kosovo (including its legal framework and state iconography) to reflect properly its overwhelming ethnic Albanian majority. Nevertheless, Kosovan leaders have often acted in a way that meant Kosovo assuming kin-state-like functions. A case in point is a recent resolution adopted in the Kosovan parliament on the rights of Albanians in the three municipalities in south Serbia.[39]

Nonetheless, when it comes to various citizenship rights such as social benefits or free movement, Kosovo Albanians, most of whom have only Kosovan citizenship, are disadvantaged compared to other communities, whose members are linked to other citizenship regimes in the region. Kosovan passport holders remain

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[36] Sherrill Stroschein, "Making or Breaking Kosovo: Applications of Dispersed State Control", *Perspectives on Politics* 6:4 (2008), 655-74.

[37] Christian Joppke, "Transformation of citizenship: status, rights, identity", *Citizenship studies*, 11:1 (2007), 37–48, 44.

[38] A new census was carried out in Kosovo in 2011, but was boycotted by most of the members of the Serb community. According to the data from this census, Albanians constitute 92.9 % of the overall population of 1.7 million. See the final results of the 2011 census in Kosovo, available at: http://esk.rks-gov.net/rekos2011/?cid=2,1.

[39] Kosovo Assembly, *Resolution No 04-R-011 on the rights of Albanians in Presheva, Bujanoc and Medvegja*, Pristina, 6 June 2013.

the only citizens in the Western Balkans who still need a visa to travel within the European Union. Although Albania, which is perceived by many Kosovan Albanians as their kin-state, recently decided to grant citizenship to ethnic Albanians in the neighbourhood and diaspora, it nevertheless excluded Kosovo Albanians, (for political reasons) from the new policy of post-territorial citizenship based on the principle of ethnic selectivity.[40]

4.2. The core non-dominant community: Serbs

More than from their numerical superiority vis-à-vis other non-dominant communities, the Serbs' position as a core non-dominant community is based on history,[41] the recent "ethnic reversal,"[42] its political organisation, the role of Serbia as a de-facto kin state,[43] and international support. Above all, the large scope of specific group (Serb)-rights and protection enshrined in Kosovar legislation make this community stand out from all others in Kosovo. A large part of the Ahtisaari Plan and the Kosovar Constitution and legislation on communities refer to the Serb Community specifically. These rights stretch out in different areas, from human, cultural and religious rights, to political participation and local self-governance. In addition, even after more than five years since the declaration of Kosovo's independence, Kosovo Serbs remain firmly attached to Serbia's citizenship regime, thus enjoying political and social rights and benefits denied to other groups in Kosovo.

Kosovo's enhanced legislative framework grants a vast array of rights and protection to its non-dominant communities. These rights were enshrined in the Ahtisaari Plan (Annex II), the Constitution of Kosovo (Chapter II and III), Law on Protection and Promotion of the Rights and Interests of Communities and their Members in the Republic of Kosovo[44] and other laws that derive from the Ahtisaari

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[40] Gezim Krasniqi, "Albania to grant citizenship to Ethnic Albanians in the neighbourhood and diaspora", *EUDO Observatory on Citizenship*, 4 July 2013. Available at: http://eudo-citizenship.eu/news/citizenship-news/921-albania-to-grant-citizenship-to-ethnic-albanians-in-the-neighbourhood-and-diaspora.

[41] Kosovo occupies an important place in the modern Serb understanding of nationhood and statehood. In addition to 'the Battle of Kosovo' (1389), which takes a central place in the modern Serbian nationalist discourse and narratives, and the fact that Kosovo was part of Serbia and dominated politically by Serbs for most of the 20th century, Serbia's treatment of Kosovo as its territory, plays a great part in determining the present position of Serbs vis-à-vis the Kosovan state.

[42] According to Riga and Kennedy, 'ethnic reversal' occurs when 'formally dominant majorities' suffer status decline, while previously 'minoritised majorities' attain new political powers. See Liliana Riga and James Kennedy, "Tolerant majorities, loyal minorities and 'ethnic reversals': constructing minority rights at Versailles 1919", *Nations and Nationalism* 15 (2009), 461–482.

[43] For a detailed analyses of the relationship between Kosovo Serbs and the state of Serbia see Gëzim Krasniqi, "'Quadratic nexus' and the process of democratisation and state-building in Albania and Kosovo: a comparison", *Nationalities Papers, The Journal of Nationalism and Ethnicity*, 41:3 (2013), 395-411.

[44] *Law No. 03/L-047.*

Plan and are of 'vital interest' to communities. To that end, Kosovo has provided for a wide network of institutions and mechanisms dealing with human and minority rights.[45]

In addition to the fact that Serbian is an official language[46] throughout the territory of Kosovo together with Albanian, the Serb community in Kosovo is guaranteed 10 reserved seats in the parliament, at least one ministerial portfolio in the government, and proportional representation, as well as quotas, on other levels of governance.[47] Moreover, the principle of double-majority is put in place for these pieces of legislation that are of 'vital interest' to the Serb community.

In order to prevent Albanian domination in government and extend powers to the local Serbs, the Ahtisaari Plan outlines a detailed proposal for decentralisation, including enhanced governance powers that are allocated to local level municipalities, including the ability to engage in cross-border cooperation with Serbia and to form associations of municipalities.[48] According to the Kosovan Law on Self-government,[49] municipalities shall exercise their own, delegated and enhanced competences. These enhanced competences are designed for Serb dominated municipalities exclusively, thus creating an asymmetry of municipal competences and local self-governance powers. According to article 22 and 23 of the law on self-government, all municipalities in which the Kosovan Serb Community is in the majority have enhanced competences in the area of culture (including protection and promotion of Serbian and other religious and cultural heritage within the municipal territory as well as support for local religious communities) and enhanced participatory rights in selection of local police station commanders.

As regards asymmetry however, the principle of asymmetric rights and competences is also applied within the Serb majority municipalities. Thus, only the municipalities of Mitrovica North, Gracanica and Strpce have the competence for

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[45] These include: Constitutional Council for Communities (with the office of the president of Kosovo), Ministry of Communities and Return, Advisory Office on Community Affairs (within the prime minister's office), Parliamentary Committee on the Rights and Interest of Communities, Advisory Office on Good Governance, Human Rights, Equal Opportunities and gender (within the prime minister's office), Ministerial Human Rights Units and Coordinators, Ombudsperson etc.

[46] In addition, according to the law, the Kosovo Serb Community shall have access to a licensed Kosovo-wide independent Serbian-language television channel, which started operating in January 2013.

[47] Despite the fact the Kosovo Serbs from the north have boycotted Kosovan institutions and elections, three Serb political groups – SLS, SDS KiM, and a citizens' initiative named the Joint Serbian List (JSL) – are currently present in the parliament, making a total of 15 seats (www.assemblykosova.org). These parties joined forces with other minority parties in the parliament to form a coalition with two other Albanian parties. As a result, Serb representatives hold the positions of deputy-chairman of the Kosovo Assembly, deputy prime-minister, and three ministries. In addition, they are represented in the Consultative Council for Communities (with the office of the president of Kosovo), Advisory Office on Community Affairs (within the prime minister's office), Parliamentary Committee on the Rights and Interest of Communities and other institutions.

[48] Stroschein, "Making or Breaking Kosovo", 657.

[49] *Law Nr. 03/L-040*.

provision of secondary health care, including registration and licensing of health care institutions, recruitment, payment of salaries and training of health care personnel and administrators. Although it is difficult to determine how much this is a political decision and how much it is simply the economy of scale and the size of the municipalities that influenced this particular outcome, this certainly establishes asymmetry across Serb-dominated municipalities.

In line with the Ahtisaari Plan and in accordance with the European Charter of Local Self-governance, immediately after the declaration of independence, the Kosovar authorities initiated the creation of five new municipalities with a Serb majority and the extension of one other. In the 2009 and 2010 local elections four (the municipality of North Mitrovica is still not established) new Serb-dominated municipalities came into being, thus representing a landmark development in the integration of the Serb community in Kosovo's institutions and legal system. Once the process of decentralisation is complete, the Serb community in Kosovo will form a majority in 10 municipalities located in the northern, eastern, and southern part of the country.

In addition to municipalities with enhanced competences, Kosovo's legislation provides for the creation of 'Special Protective Zones'[50] to ensure protection of Serbian religious sites, as well as historical and cultural sites of special significance for the Kosovo Serb community. Although the law on special protective zones stipulates that its aim is to "ensure protection of Serbian Orthodox Monasteries, Churches, other religious sites, as well as historical and cultural sites of special significance for the Kosovo Serb community, **as well as other communities** [my emphasis] in Republic of Kosova, through the establishment of Special Protective Zones", in reality, it addresses the issue of the protection of the Serb historical, religious and cultural heritage alone. This means that the Serbian community in Kosovo is accorded special cultural and religious treatment and privileges.

Last but not least, the Serb community in Kosovo has extensive competences in the field of education. According to the law, primary and secondary schools that teach in the Serbian Language may apply curricula or textbooks developed by the Ministry of Education of the Republic of Serbia upon notification to the Kosovo Ministry of Education, Science and Technology. However, in reality, education remains one of the most segregated areas in Kosovo, with Kosovo Serb pupils and students attending schools that are part of Serbia's educational system. Although Kosovo has prepared and approved an integrated curriculum and teaching materials for the Serbian primary and secondary schools, and irrespective of the fact that in

[50] According to the Law Nr. 03/L-039, 'Special Protective Zone' shall be an area defined by a map, or by a defined area surrounding a monument, building, group of buildings, ensemble, village, or historic town centre that is safeguarded from any development or activity which could damage its historical, cultural, architectural or archaeological context, natural environment or aesthetic visual setting.

many cases pays salaries for teachers working in schools run by the Republic of Serbia,[51] the Serb's education in Kosovo still functions outside of the Kosovan system.

4.3. The core of the 'core non-dominant' community: Serbs in the North

The new situation created in Kosovo after February 2008 and the issue of decentralisation of power and the creation of new Serb-majority municipalities deepened the division between Kosovo Serbs living north and south of the river Ibar which has existed since 1999. North Kosovo, which includes the Serb-dominated municipalities of Zvecan, Zubin Potok and Leposavic, as well as the northern part of the city of Mitrovica (which according to the Ahtisaari Plan should become a separate municipality), has in many ways become a hub for Serbs in Kosovo, an intellectual and political centre. It holds a university (officially called 'Pristina University') which is part of Serbia's educational system. Local Serbs, who "see the North as their last stand,"[52] are gathered around the north Mitrovica Serb National Council, an umbrella group representing Kosovo Serbs. Apart from the continuous boycott of elections, urged by Serbia, local Serbs in the northern part of Kosovo boycotted the first overall census in Kosovo in April 2011. In 2012 they organised a referendum where the overwhelming majority voted to reject contact with independent Kosovo's institutions. Serbia, Kosovo and the international community dismissed the vote as irrelevant.[53] The resistance of Kosovo Serbs in general and those in the north in particular against integration into the Kosovar system is "understood by them as upholding of the remnants of the Serbian legal order in Kosovo."[54]

Although outside the Kosovan political and legal system, Serbs in northern Kosovo are in a rather specific, if not favourable position, compared to the rest of the Serbs in Kosovo. They form an overwhelming majority in that region, have their own institutions (supported actively by Serbia) and keep close ties with other cities across the border in Serbia. This specific position of the north was recognised by Serbia, Kosovo and the EU as it became a critical theme in the EU-facilitated dialogue between Pristina and Belgrade. So, after ten rounds of often gruelling talks in the EU-facilitated dialogue, Kosovo and Serbia reached a landmark agreement on 19 April 2013,[55] as the respective prime ministers initialled an agreement[56] aimed at normalising relations between Serbia and Kosovo.[57]

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[51] Helsinki Committee for Human Rights in Serbia, *Serb Community in Kosovo* (June 2012), available at: http://www.helsinki.org.rs/doc/Serb%20Community%20in%20Kosovo.pdf.

[52] ICG, *North Kosovo: Dual Sovereignty in Practice*. Europe Report No. 211, 2011, i.

[53] "Northern Serbs Vote 'No' to Kosovo", *Balkan Insight*, 16 February 2012. Available at: http://www.balkaninsight.com/en/article/99-74-kosovo-serbs-say-no-to-pristina.

[54] Zoran Oklopcic, "*Populus Interruptus:* Self-Determination, the Independence of Kosovo, and the Vocabulary of Peoplehood", *Leiden Journal of International Law*, 22 (2009): 677-702, 697.

[55] See "Kosovo and Serbia: Breakthrough at least", *The Economist*, 27 April 2013. Available at: http://www.economist.com/news/europe/21576701-serbia-and-kosovo-agree-last-balkan-breakthrough.

While the agreement will eventually enable Kosovo institutions to establish nominal control in the northern part of the country (through the integration of the existing judicial and security structures into the Kosovan system), certain elements of the agreement will enhance the position of northern Kosovo as a special territory within the country. This is evident in two fields: judiciary and policing. According to point 9 of the agreement, there shall be a Police Regional Commander for the four northern Serb majority municipalities (Northern Mitrovica, Zvecan, Zubin Potok and Leposavic). This will impose changes in the present organisation of the police in Kosovo, thus elevating northern Kosovo to the status of a separate region. Likewise, as regards the organisation of the judiciary, the agreement foresees the establishment of a panel composed of a majority of Kosovo Serb judges by the Appellate Court in Pristina to deal with all Kosovo Serb majority municipalities. A division of this Appellate Court, composed both of administrative staff and judges will sit permanently in northern Mitrovica (Mitrovica District Court). In an another attempt to single out northern Kosovo from the rest of the country and Serb-dominated municipalities, the Serbian government demanded that NATO provides written guarantees the Security Force of Kosovo (KSF), or a future Kosovan army, will not be present in northern Kosovo.[58]

Although at present Kosovo Serbs from the north oppose the agreement and there are on-going discussions on the implementation plan, including the organisation of elections in November 2013, once implemented, the agreement could reinforce the asymmetric[59] position between the Kosovo Serbs from the north and

[56] No official text of agreement has been circulated. However, a Kosovo daily *Gazeta Express* published un unofficial version of the text: http://gazetaexpress.com/?cid=1,13,109459.

[57] The agreement provides for the establishment of an 'Association/Community' of municipalities where Serbs comprise a majority of the population, initially made up of the four disputed northern municipalities, but open to any other municipalities. This body will have full overview of the areas of economic development, education, health, urban and rural planning and shall have a representative role to the central authorities. Although the agreement has been widely perceived as a positive step towards the normalisation of relations between Kosovo and Serbia, according to Eric Gordy, the agreement is more about accommodation of political lobbies then the rights of citizens. "So fundamentally what is established here is a political lobby with limited authority but with a guarantee of employment for politicians who became entrenched in the parallel structures, with the Kosovo government assuming the duty of financing their maintenance […] More telling than what the agreement provides is what it does not say. Although the dispute has been presented as involving the rights of ethnic Serb citizens, two words that appear nowhere in the text are 'citizens' and 'rights'. This is an agreement between elites for the transfer of clients from one sponsor to another." Eric Gordy, "Serbia-Kosovo agreement: political breakthrough or jobs for the boys?", *Citizenship in Southeast Europe*, 25 April 2013. Available at: http://www.citsee.eu/related-content/serbia-kosovo-agreement-political-breakthrough-or-jobs-boys.

[58] Miroslav Flego, "Ivica Dačić odgovara na kritike: 'Po prvi put smo dobili jamstva da kosovska vojska neće na sjever'", *Večernji list*, 24 April 2013. Available at: http://www.vecernji.hr/vijesti/po-prvi-put-smo-dobili-jamstva-da-kosovska-vojska-nece-sjever-clanak-543133.

[59] Already, according to the Ahtisaari Plan, the Municipality of Mitrovica North has enhanced competences on secondary health care, as well as competence for the provision of higher education,

those Serbs living in the other parts of the country. In this case, one could argue that in Kosovo there exists inter-community asymmetry as well as intra-community asymmetry of rights, all part of a complex hierarchy of citizenship.

In general, the previous negotiation process that led to Kosovo's supervised independence as well as the current EU-led dialogue revolved around the position and accommodation of the Serb community in Kosovo. The main demand of the Serbian state, as well as some of Kosovo Serb leaders, has been the right of Serbs from Kosovo to opt out, partially or fully, from certain aspects of the emerging Kosovan citizenship regime and political system. Education and healthcare system are the two main fields where Kosovo Serbs, both in the north and south, can opt out from the Kosovan system.

Notwithstanding the vast array of rights guaranteed for Serbs, the latter had been the worst affected community after the end of the war in Kosovo. Their numbers have shrunk as a result of fleeing and deportation, and with the exception of North Mitrovica, Kosovo Serbs today inhabit mostly small, isolated and rural areas. In addition, bar the 2000-2004 period, Kosovo Serb leaders, in particular the ones in the northern part of the territory, have refused to participate in the Kosovan institutions as a means to improve the position of the community. This boycott of Kosovan institutions has weakened the bargaining power of the Serb leaders in the Kosovan system and weakened the political position of the whole community. Equally, despite the fact that Kosovo Serbs remain tied to the Serbian citizenship regime and receive preferential treatment, when it comes to issues such as free movement, Kosovo Serbs occupy a lower position in the Serbian citizenship hierarchy as well. A case in point is the 2009 agreement between Serbia and the EU on visa liberalisation, which excludes the residents of Kosovo from the visa-free-travel regime. As a result, Kosovo's residents, both Serbs and Albanians, holding Serbian passports, are affected by discriminatory citizenship practices such as exclusion of people from one region (or, at least, tacit complicity in the EU-imposed exclusion) from the benefits enjoyed by all other citizens. [60]

4.4. The semi-peripheral community: Turks

The Turkish community in Kosovo, although quite small in number[61], occupies a specific position within the political and legal system in Kosovo. This specific position has resulted from the preferential treatment that this community enjoys based on the legal framework in Kosovo, its relations with the dominant community and the role of Turkey, perceived as the kin-state of Turks in Kosovo.

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including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators.

[60] See Jelena Vasiljević, "Imagining and managing the nation: tracing citizenship policies in Serbia", *Citizenship Studies*, 16:3-4 (2012): 323-336, 332.

[61] According to the last census in Kosovo, the number of Turks in Kosovo is 18,738, or around one per cent of the overall population.

As regards the rights of the Turkish community in Kosovo, it enjoys a wide array of rights, mostly in the field of self-governance and language. It has two guaranteed seats in the Kosovar Parliament and representation in other consultative bodies for non-dominant communities, as well as in the local governance. At present, the leading Turkish party in Kosovo (*Turkish Democratic Party of Kosovo - KTDP*) is represented in the Kosovar Parliament with three MPs and its president holds the position of the Minister of Public Administration in the Kosovan Government. As part of the process of decentralisation of power in Kosovo, the Turkish community of Mamusa was granted the status of a municipality in 2008. This is the only Turkish dominated municipality in Kosovo. Moreover, based on the law on the use of languages,[62] Turkish, together with Bosnian and Roma, is a language in official use at the local level. However, although the law stipulates that this is valid only 'in municipalities inhabited by a community whose mother tongue is not an official language, and which constitutes at least five (5) per cent of the total population of the municipality,' Turkish is an official language in the municipality of Prizren regardless of the five per cent criteria. Moreover, since 2008 Turkish has gained the status of a language in official use in five other Kosovan towns, including the capital city.[63]

In addition, Turkey's good relations with Kosovo in all bilateral issues and areas of interest have resulted in the former's increased financial and cultural support to the Turkish community in Kosovo. This, together with Turkey's favourable external citizenship policies towards its ethnic kin,[64] has had a noticeable impact on the position of the Turkish community in Kosovo, both in terms of its integration into the Kosovan system and institutions, as well as on its social and economic wellbeing.

4.5. The elusive peripheral communities: Gorani and Bosniaks

While the Serb community in Kosovo has attracted continued attention from the Kosovan leaders, Serbia and international actors, other communities have attracted far less or no attention at all. Bosniak and Gorani communities in many ways remain in the 'grey zone' between the more organised and politically established core communities described above, and the Roma, Ashkali and Egyptian (RAE) communities which, as a Roma journalist put it, have become the forgotten citizens of the newly independent Kosovo.[65] In fact, being Slavic speaking and Muslim,

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[62] *Law No. 02/L-37 on the use of languages.*

[63] OSCE, *Implementation of the Law on the Use of Languages by Kosovo Municipalities* (2008). Available at: http://www.osce.org/kosovo/32762.

[64] Many Kosovo Turks have become Turkish citizens and acquired Turikish citizenship and have enjoyed various citizenship rights in Turkey. For more on Turkey's citizenship policies of ethnic exceptionalism and selectivity see Zeynep Kadirbeyoglu, "Country Report: Turkey", *EUDO Citizenship Observatory*, 2012. Available at:

[65] Roman Galjus, cited in Nando Sigona, "Between Competing Imaginaries of Statehood", 1215.

Bosniaks and Gorani, although recognised as separate ethnic groups in the Kosovan legislation and provided with reserved seats in the Kosovan parliament (3 and 1 respectively), remain caught between multiple and often conflicting political visions and interests that assign different identities to them. In particular in the Prizren region, the divide between the Kosovo Bosniak and Gorani communities is especially porous, as both communities share a number of key characteristics, with the main distinguishing feature being political affiliation.[66] In addition, different Balkans states such as Serbia, Macedonia, Bosnia,[67] Macedonia, and even Bulgaria and Turkey claim them as co-ethnics and have even provided some of them with passports. In other words, the tendency of the neighbouring states to 'appropriate' them through the extension of partial or full citizenship rights despite the fact that they have their own political self-identification and mostly do not identify with an external homeland[68] makes them "perceived co-ethnics".[69]

Irrespective of their numbers and their compact territorial concentration, these communities have not profited from the decentralisation of power. Thus, up to this day they form minorities in Albanian-dominated municipalities in the southern and western part of the country. In fact, leaders of these communities have demanded the creation of two Gorani[70] and Bosnian-dominated municipalities, one in the south and one in the west of Kosovo respectively.[71] As regards linguistic rights, Bosnian is a language in official use in three municipalities, but education remains a problem. Lacking curricula and programs adopted by Kosovo, a number of these Slavic speaking communities, especially the Gorani, are part of the education system of the Republic of Serbia.

So although constitutionally recognised as separate communities and granted political representation, as a result of the lack of external support, lack of active elites

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[66] OSCE Mission in Kosovo, *Kosovo Bosniak Community Profile* (2010), 3. Available at: http://www.osce.org/kosovo/75450.

[67] Bosnia's constitutional setting and internal divisions, as well as its stance against Kosovo's independence inhibit a more pro-active approach towards this community. Nevertheless, various Bosniak politicians keep referring to Kosovo's Slavic Muslim communities as their 'ethnic-kin'.

[68] A number of political leaders of the Gorani and Bosnian leaders invoke Bosnia and Herzegovina as their external homeland or kin-state. However, leaders of these communities have often been very pragmatic in navigating between various political projects, structures and interests. Author's interview with a Bosniak MP in the Kosovan Parlaiment, Pristina, 10 January 2013.

[69] For more on 'perceived co-ethnics' see Dejan Stjepanović, "Perceived Co-Ethnics' and Kin-State Citizenship in Southeastern Europe", *CITSEE Working Paper 2013/26* (Edinburgh: CITSEE, 2013). Available at: http://www.citsee.ed.ac.uk/working_papers/files/CITSEE_WORKING_PAPER_2013-26.pdf.

[70] In addition to supporting Gorani education, the Serbian government sought the support of Gorani leaders in Kosovo by promising to re-instate the municipality of Gora and even include it into the planned Association of Serb Municipalities in Kosovo.

[71] "Në Ditët e tyre, boshnjakët kërkojnë komunën e Gorës" [On their holiday, Bosniaks demand the creation of the municipality of Gora], *KOHAnet, 28 September 2012.* Available at: http://www.koha.net/arkiva/?page=1,13,116977; Author's interview with a Bosniak MP in the Kosovan Parlaiment, Pristina, 10 January 2013.

and educational and economic resources, although a sizeable community, they remain in the periphery of the Kosovan polity.

4.6. The unrecognised communities: Montenegrins and Croats

Montenegrins and Croats represent two ethnic groups traditionally present in the territory of Kosovo, which still remain constitutionally unrecognised as separate categories (communities). Although quite small in numbers and concentrated in certain regions of the country, these two communities were recognised as separate groups in socialist Yugoslavia but lost their status in the 1990s under the regime of Slobodan Milošević. As a result of the Yugoslav wars of succession and the subsequent waves of deportation and migration, the number of Croats and Montenegrins in Kosovo dropped after 1999. Nonetheless, supported by their respective kin-states[72] (which have good relations with Kosovo) and profiting from an improved inter-ethnic climate in Kosovo, recent years saw renewed attempts by emerging leaders of these communities to organise politically and demand equal recognition and treatment.

Although the newly emergent Montenegrin political leadership in Kosovo advocates for disassociation of Montenegrins from the Kosovo Serbs, the reality on the ground is more complex with many members of this community being still reluctant to publicly self-identify as Montenegrins, especially in cases where they are integrated into the Kosovo Serb community, and benefit from institutions financed by the Republic of Serbia.[73] Yet, the state of Montenegro actively supports the idea of disassociation and consolidation of a separate Montenegrin community in Kosovo. In fact, although Montenegro recognises Kosovo's independence, it has nevertheless made the exchange of ambassadors conditional on granting the community status and representation in the Kosovo parliament for its ethnic kin as well as return of refugees (mostly Roma) from Kosovo that continue to reside in Montenegro.

Although Kosovan politicians have promised to recognise Montenegrin and Croat communities and grant them political representation, both communities remain constitutionally unrecognised as yet. Nonetheless, it remains to be seen how an eventual recognition and granting of reserved seats in the parliament would change the present socio-political reality, improve their position and help them integrate into the Kosovan society and state. Although leaders of these communities perceive Croatia and Montenegro as their kin-states, at present most of the members

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[72] Nonetheless, due to the fact that Montenegro does not allow dual citizenship, Kosovo Montenegrins cannot acquire Montenegrin citizenship. Moreover, as Dzankic shows, many Montenegrin refugees from Kosovo had their political rights conferred in Montenegro, for they were deemed more likely to support the pro-Serb opposition parties which would likely result in a change of political parties in power. Jelena Dzankic, "Understanding Montenegrin citizenship", *Citizenship Studies*, 16:3-4 (2012), 337-351, 344.

[73] OSCE Mission in Kosovo, *Kosovo Montenegrin Community Profile* (2010), 3. Available at: http://www.osce.org/kosovo/75450.

of these communities benefit from the education and health services funded by the Republic of Serbia in Kosovo.

4.7. The invisible communities: Roma, Ashkali and Egyptian (RAE)

Despite being a community with a long history of living in Kosovo and the region, Egyptians and Ashkali were not recognised as separate ethnic categories from Roma until quite recently, in 1991 and 1999 respectively. Although there are different interpretations about the ethnogenesis and specific cultural and social traits of these communities, language is one of the main factors that differentiate Roma from the Ashkali and Egyptian communities in the case of Kosovo. While all the three communities are predominantly Muslim, Roma speak the Romani language while Egyptians and Ashkali are Albanian speaking.[74] Although these three communities face similar and enormous challenges as they remain caught between multiple and conflicting political structures and interests, the Albanian-speaking Ashkali and Egyptian minorities are slightly better positioned than the Roma, who were traditionally closer to the Serbian community.[75]

Facing problems of discrimination, inability to return, chronic unemployment, lacking a political elite that would champion community rights, as well as lacking a kin-state that would lobby for them, RAE communities in Kosovo are viewed as a human rights issue for external organisations and agencies to deal with. Thus, as Sigona put it, "A corollary to the compartmentalisation of RAE in a human- and minority-rights discursive and policy frame is their de facto exclusion from citizenry, with the Kosovo authorities feeling legitimised in not treating RAE as Kosovo citizens and political subjects, but rather as an issue for the international community to deal with."[76] Despite the fact that the Kosovan government has adopted a Strategy for Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015[77] in order to provide them with better conditions and to facilitate their integration into Kosovar society, their position remains vulnerable as this community continues to face enormous political, social and economic challenges. Probably the biggest problem faced by these communities is the lack of sustainable return[78] and property restitution. Thus, although officially recognised as separate

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[74] For more on the identity formation dynamics of these groups see Elena Marushiakova et al, *Identity Formation among Minorities in the Balkans: The cases of Roms, Egyptians and Ashkali in Kosovo* (Sofia: Minority Studies Society *Studii Romani*, 2001). Available at: http://home.uchicago.edu/~vfriedm/Articles/Edit008Friedman01.pdf.

[75] Nando Sigona, "Between Competing Imaginaries of Statehood", 1221.

[76] Ibid., 1223.

[77] Available at: http://www.web-kfos.org/home/images/stories//rae-eng.pdf.

[78] The number of Roma, Ashkali and Egyptians in Kosovo dropped significantly as a result of migration, war and deportation. According to the 2011 census in Kosovo, there are 15,436 Ashkali or 0.9%, 11,524 Egyptians or 0.6% and 8,824 Roma or 0.5%. See Kosovo Agency of Statistics, *Kosovo Population and Housing Census 2011: Final Results.* Available at: http://esk.rks-gov.net/rekos2011/repository/docs/Final%20Results_ENG.pdf.

ethno-national communities and provided with reserved seats in the parliament (4) and proportional representation in local governance institutions, these communities remain almost completely invisible in the socio-political landscape in Kosovo.

In sum, unlike various other groups in Kosovo, members of the RAE communities in Kosovo struggle to enjoy basic citizenship rights within Kosovo as many of them remain stateless or have the status of refuges or IDPs (Internally Displaced People) in the region. Only a small number of Roma people benefit from social services provided by the state of Serbia in Kosovo. Undoubtedly, RAE communities in Kosovo still enjoy only partial citizenship rights within Kosovo and have no prospect of benefiting from external citizenship policies of a would-be kin-state.

5. Legal equality versus socio-political reality

As pointed out earlier, the 'absolute' equality of all individuals and extensive group rights enshrined in the constitution and basic laws does not automatically translate into an equally sound and favourable social and political reality.[79] Individuals belonging to non-dominant communities still face many issues and challenges, ranging from partial implementation of some of the basic laws,[80] to the issue of lack of trust in local and central state institutions. Security concerns, lack of sustainable return, lack of socio-economic opportunities and dissatisfaction with the current political climate top the list of Kosovo's non-dominant communities' concerns.

One field that exemplifies both the discrepancy between legal entitlement to rights and representation and uneven levels of distribution of these rights across communities is representation in civil service. A 2013 OSCE monitoring report shows that members of the non-dominant communities continue to be under-represented in the civil service in Kosovo. Although the Kosovo Civil Service Law mandates that a minimum of 10 per cent of the workforce must be represented by members of non-dominant communities at the central level, and that local-level representation must be proportionate to the demographic composition of each municipality, at the central level, non-dominant communities occupy approximately eight per cent of civil service positions.[81] This is a clear example of the domination of Albanians in the Kosovan civil service. On the other hand, as regards the uneven levels of distribution of representation across non-dominant communities, RAE and Gorani are proportionally under-represented, while Bosniaks, Serbs and Turks are proportionally over-represented.[82]

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[79] For a detailed profile of Kosovo's communities and challenges faced by them see OSCE, *Kosovo Communities Profiles* (2010). Available at http://www.osce.org/kosovo/75450.

[80] As regards problems with the use of official languages, see OSCE, *Implementation of the Law on the Use of Languages by Kosovo Municipalities* (2008). Available at: http://www.osce.org/kosovo/32762.

[81] OSCE Mission in Kosovo, *Representation of Communities in the Civil Service in Kosovo* (2013). Available at: http://www.osce.org/kosovo/99601.

[82] Ibid.

The 1999 war and its immediate aftermath have had serious consequences on the lives, property and organisation of Kosovo's smaller communities. As a result of the war, both the number of people belonging to non-dominant communities and their social capital has been reduced significantly in most of the territory of Kosovo. Nonetheless, the most dreadful legacy of the war is the almost complete inter-ethnic segregation that it produced and which is still almost intact even more than 15 years since the end of the war. While in the rest of Kosovo there have been significant advancements in the realm of political and institutional integration of the non-Albanian communities, education[83] and healthcare system remain almost completely segregated. This segregation has been institutionalised since 1999,[84] with a Kosovo-run system offering services to the Albanian community and other non-dominant communities (Turks, Ashkali, Egyptian, Bosniak) on one hand, and a Republic of Serbia-run institutional network providing services for the Serb community, but also other communities, such as Roma, Gorani, Montenegrin and Croat.

This segregation along ethnic and linguistic lines, combined with differences in quality of services, salaries and other social benefits offered by the two separate institutional frameworks and networks in Kosovo adds another major factor that contributes to the existence of an intermittent socio-political reality regarding the position of various communities, thus practically challenging the absolute constitutional equality.

6. 'Community-building' vs. the politics of 'people-building'

Despite the constitutionally enshrined republican ideals of equality and citizen's loyalty to the state, the new Kosovan polity faces serious challenges when it comes to establishing legitimacy and forging a common political (not national) identity. Irrespective of the scope of rights that individuals and communities enjoy in Kosovo today, in reality the citizenship 'contract' in Kosovo was not a consensual outcome of the constitutive communities in the new polity. Rather, as already emphasised, the citizenship regime in Kosovo reflects international actors' vision of the Kosovan state. In a way, the lack of unanimity in polity formation in the case of Kosovo was replaced by the constitutive involvement of external states, which nevertheless invoked the vocabulary of 'peoplehood'.[85] Regardless of the involvement of almost all the relevant actors in Kosovo and in the international community, the Ahtisaari

[83] Nataša Pantić, "Citizenship and Education Policies in the post-Yugoslav States", *CITSEE Working Paper Series 2012/23* (Edinburgh: 2012). Available at: http://www.law.ed.ac.uk/file_download/series/376_citizenshipandeducationpoliciesinthepostyugoslavstates.pdf.

[84] For a detailed account of the emergence of the segregated health system in Kosovo see J.D. Bloom et al, "Ethnic segregation in Kosovo's post-war health care system", *European Journal of Public Health*, 17:5 (2006), 430–436.

[85] For a detailed discussion of invocation, both by local and foreign actors, of the vocabulary of 'peoplehood' in the case of Kosovo as a means of overcoming lack of unanimity and avowing the concept of national self-determination', see Zoran Oklopcic, "*Populus Interruptus*".

Plan presents a sort of balanced compromise between the aspirations of Kosovo Albanians for a sovereign 'nation-state', the aspirations of Serbia to (nominally) retain Kosovo as its part, and the international community's ultimate goal of preserving regional stability and control. Therefore, at the end, the final solution is one that does not satisfy any of the parties and thus cannot serve as a contract. As such, the new state faces serious challenges in terms of establishing its legitimacy in the eyes of its constituent communities, especially the Serb community. The lack of unanimity in the process of polity formation in the case of Kosovo certainly did not generate legitimacy, which is essential for the stability and viability of a polity.

Regardless of how favourable and advanced, legal provisions and norms alone cannot generate nominal inclusive political identity. This is very difficult in particular in those cases of post-conflict societies and predominant aggravated inter-ethnic relations and linguistic difference. In addition, the emphases on group-differentiated rights that various individuals are supposed to enjoy as a result of their belonging to their respective communities, defined in terms of ethnic criteria, establishes the particular sub-state community as the prime site of political activity and identity. Hence there is a weaker sense of identification with the wider political community – the state. Clearly, citizenship regimes and statuses are products of the "politics of people-building".[86] According to Rogers Smith, this on-going and complex process of people-building involves competing narratives, accounts and stories advanced by various leaders and would-be leaders in order to both maintain and modify pre-existing sense of political identity.[87] In essence, the problem of people-building is a problem of finding ways to generate trust among fellow members of a political community and between citizens and leaders, which is a *sine qua non* condition for the creation of an enduring sense of political community.

As in many other cases of smaller and weaker states, of the three stories of peoplehood identified by Smith – economic stories, political power stories and 'constitutive' stories (constitutive factors of the very identities of persons)[88] – common 'constitutive' stories that inspire trust and worth among members of a political community are the quintessential ones. Thus, in the case of Kosovo, despite the invocation of the term 'people' by Kosovan elites and external constitutive actors, the dominance of particular and exclusive ethno-national 'constitutive' stories and lack of economic stories (Kosovo remains the poorest country in the region) anticipates the emergence of some form of basic political loyalty to the new state and its institutions.

[86] Robers M. Smith, "Citizenship and the Politics of People-Building", *Citizenship Studies*, 5:1 (2001), 73-96.

[87] Ibid., 76.

[88] Ibid., 79-80.

Conclusion

Undoubtedly, recognition and a policy of group-differentiated rights is a much better solution than denial. However, as the case of Kosovo shows, insistence on group-differentiated rights and the contingency of various rights on membership of a 'community' can produce a clear hierarchy of citizenship rights assigned to each group, and even deeper ethnic divisions and reified group differences. This particular outcome is at the same time a result of the very nature of differentiated citizenship – 'the dilemma of recognition', as well as of the particular Kosovan context where politics of recognition and differentiated citizenship affect various communities unevenly. This in turn contributes to the emergence of hierarchical uneven citizenship.

Although formally all communities are included into the social and political system in Kosovo, in reality, Roma, Ashkali and Egyptian communities, and to a certain extent the Gorani community, remain "excluded from the privileged seats in the theatre of society"[89] and state in Kosovo. In other words, despite the legally enshrined principle of equality, some communities in Kosovo are more equal and thus occupy the core of the polity and society, while some remain in semi-periphery or periphery.

As described above, although Kosovo is designed as a state of its citizens with strong guarantees and mechanisms of representation and protection for non-dominant groups, the level of rights and political representation and socio-economic wellbeing that each community enjoys remains highly uneven. While the political dominance of the Albanian community is clearly evident, among the non-dominant core, semi-peripheral, unrecognised and invisible communities, those communities that have an active political elite and strong kin-state (Serbs and Turks), as well as access to external kin-state citizenship, occupy a higher and more favourable position in the hierarchy as opposed to communities that do not posses a kin state (RAE and Gorani). This highlights the importance of external actors in general and kin-states in particular, as well as the impact of external citizenship and citizenship constellations on Kosovo's communities and their legal status and socio-political position.

Although quite complex and peculiar, the hierarchy of citizenship rights in Kosovo is one of the many forms in which the policies of uneven citizenship rights are manifested in a given polity. Although unevenness is almost inherent in plural societies based on the principles of group-differentiated rights, its manifestation and the nature of hierarchical citizenship is susceptible to wider political, historic, cultural, demographic, economic and regional contextual factors. Nonetheless, the existing hierarchy and position of communities in the Kosovan citizenship regime is far from static. Rather, it reflects and is contingent on the current constitutional setting and the political, social and economic state of affairs in Kosovo. Any change in the legal system and in the reality on the ground would certainly have

[89] Wimmer, *Nationalist Exclusion and Ethnic Conflict*, 4

repercussions for the citizenship regime in Kosovo and the relations among different communities and between the communities and the central state.

Regardless of the legal definition, in the absolute majority of cases a state is appropriated and dominated by a core group or community, be it the 'titular nation', 'majority', 'core ethnic group' etc. However, as the case of Kosovo shows, in multicultural or plural societies organised on the principles of political recognition of group difference, one can distinguish not only between the core dominant group and the non-dominant groups, but also between a core non-dominant group and other non-dominant groups. Thus, differentiated citizenship is not necessarily only about a majority-minority binary divide. It implies hierarchies as well as tensions within and between non-dominant groups resulting from uneven distribution of rights or structural socio-political inequalities.

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