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Civic nationhood and the challenges of minority inclusion

The case of the post-communist Czech Republic

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ABSTRACT This article explores the theoretical debate over how best to conceptualize the ‘civic nation’ and its implications for minority inclusion. By examining the Czech government’s treatment of the Roma minority according to a four-part measure of civic inclusiveness, it assesses the extent to which the regime’s foundation on the ‘civic principle’ has produced a political community that actually treats all citizens equally. The article thereby both critically assesses the claim that the use of the civic principle is inherently conducive to minority inclusion and civic equality and attempts to demonstrate that the term ‘civic’ remains useful for analyzing and classifying types of community.

KEYWORDS citizenship ● equality ● national identity ● political culture ● Roma

INTRODUCTION

The invocation of the ‘right’ of ethnic nations to self-determination is one of the defining features of nationalist politics in the post-communist world. New states throughout Central and Eastern Europe have been founded upon this principle, producing regimes in which one particular ethnic nation is constitutionally designated as the source of the state’s sovereignty. In some of these countries, the exclusion of ethnonational minorities from this essential relationship to the state has prompted the allegation that minorities are denied full political membership, producing serious ethnonational tensions. Given the tendency in the region to use the ethnic nation as the

building block of new political communities, the Czech Republic stands out as something of an exceptional case. The country's constitution uses the 'civic principle', founding the state in the name of 'We, the citizens of the Czech Republic in Bohemia, Moravia and Silesia' and resolving to build the Czech Republic 'as the home of free and equal citizens' (Parliament of the Czech Republic, 1992a). Not only is reference to the 'right of nations to self-determination' absent, the word 'nation' is not used once in the document.

The difference between the Czech Republic's definition of the citizenry as the source of state sovereignty and the ethnic definition of sovereignty predominant in post-communist Central and Eastern Europe raises the question of what sort of conceptual distinction can be made between these types of community. The starkness of the contrast invites the use of the two oppositional models of nationhood traditional to the study of nations and nationalism: the civic, wherein membership in the nation is derived from a form of citizenship that is based on ethnically neutral political criteria; and the ethnic, which bases membership on ethnic descent. The legitimacy of the civic/ethnic dichotomy has, however, become the subject of considerable controversy in recent years. In particular, some analysts have pointed out that many liberal analyses that use the dichotomy imply or express a view that the civic model is normatively preferable to the ethnic. This judgement is commonly based on the belief that the civic model provides a neutral framework for community in which civic bonds overarch, and thereby undermine, the relevance of potentially divisive differences within a polity. Analysts critical of the traditional dichotomy argue that such claims misrepresent the range of practical tendencies displayed by real (or purported) civic nations – particularly with regard to minorities – and thereby present a false case for their normative superiority. Such reassessments have led some scholars to argue for a reconceptualization of the civic/ethnic distinction and others to suggest that the concept of the 'civic nation' involves so unrealistic a representation of community that it is useless as an analytical tool.

In this article, I argue that the new Czech state, and in particular its treatment of its Roma minority, presents an interesting case through which to explore these controversies. I begin in Part I by providing an overview of the debate over the civic nation as a concept. I then lay out my case for why the peculiarities of the Czech case both offer insight into issues central to this debate and point towards a different way of analyzing and characterizing communities that are founded on the civic principle. In Part II, I examine the foundations of the new Czech regime, looking at Czech perspectives on the civic principle and the nation in historical context, the new constitutional definition of the source of state sovereignty, and the Czech citizenship law's effect on the Roma. In Part III, I assess the extent to which the Czech Republic can properly be characterized as a 'civic'

political community by applying a four-part measure of civic membership to the situation of the Roma minority. In Part IV, I look at the new Czech *Conception of Government Policy towards Members of the Roma Community Designed to Facilitate Their Social Integration* (Office of the Government of the Czech Republic, 1999) and assess its initial effects. In the final section, I offer my conclusions on the implications of the Czech case for categorizing types of community.

PART I: THE CIVIC NATION – MODEL OR MYTH?

a) The debate

The conceptual distinction between the civic and ethnic models of nationhood owes much to the work of Hans Kohn, who argued that western and eastern nationalisms are essentially opposite types. According to Kohn, 'while Western nationalism was, in its origin, connected with the concepts of individual liberty and rational cosmopolitanism current in the eighteenth century, the later nationalism in Central and Eastern Europe and in Asia easily tended towards a contrary development' (1994: 164). Kohn uses the example of German nationalism to define the eastern type, observing that it 'substituted for the legal and rational concept of "citizenship" the infinitely vaguer concept of "folk"', whose 'roots seemed to reach into the dark soil of primitive times and to have grown through thousands of hidden channels of unconscious development, not in the bright light of rational political ends' (1994: 165). Kohn's highly influential view of nationalism thus distinguished between the rational, universalistic civic nationalism of the West and the irrational, particularistic ethnic nationalism of the East.

Kohn's implied, if not explicit, normative judgement concerning the desirability of the western conception of nationhood has been carried forward in some more recent analyses of the politics of 'civic' and 'ethnic' nations, particularly in the post-communist context. Michael Ignatieff's work is frequently cited as representative of such analysis (see also Pfaff, 1993: 87). According to Ignatieff, the civic model 'envisages the nation as a community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values' (1993: 3–4). Jürgen Habermas has also provided an influential defense of the civic nation, arguing that '[t]he nation of citizens does not derive its identity from some common ethnic and cultural properties, but rather from the *praxis* of citizens who actively exercise their civil rights' (1992: 3, emphasis in original).¹ In his view, it is 'constitutional principles rooted in a political culture' rather than 'an ethical-cultural form of life as a whole' that provides the basis for civic nationhood (1992: 17). Habermas emphasizes that it is

critical to distinguish between the political community and 'sub-political' communities because without such a distinction the majority culture will become overbearing and violate the rights of other cultures to equality and 'mutual recognition' (1994: 134–5). While Habermas devotes more attention than Ignatieff to the potential tension between the universalistic state and the particularistic claims of various communities living under it, both agree that the bonds of civic nationhood are produced by political principles and practices that transcend the ties of ethnocultural identity – a normatively desirable outcome from a liberal perspective.²

Will Kymlicka and Anthony Smith, among others, have challenged such conceptualizations of the civic nation. Both point out that there is little historical evidence to support claims that civic nations are based on exclusively rational political ties and that the regimes that employ a civic definition of sovereignty are essentially culturally neutral. According to Smith, the barrier to such claims

springs from the internal contradiction at the heart of the national state between a universal conception of citizenship, with its uniform rights and duties, and an inevitably particularist conception of the 'people,' i.e. the community of which each citizen is a member. Here we have to return to the ethnic basis of so many nations. (1995: 98)

Kymlicka illustrates this argument with the American example, observing that when the US was founded, the majority of the new nation's members had common roots in English language, literature and religion (1995: 200, n. 15). While Kymlicka acknowledges that in building the new nation the American founders placed emphasis on particular political principles ('liberty, equality, democracy'), he argues that it is wrong to 'conclude from this that American nationalism is ideological *rather than* cultural. . . . Ideology shaped, but did not replace, the cultural component of national identity' (1995: 200, emphasis in original). In a similar vein, Nicholas Xenos (1996) argues that the collective identities that leaders of civic nations appeal to within the citizenry tend to draw strongly on a view of national community as natural and familial rather than strictly political.³

Given that civic nations are not culturally neutral, there is no reason, argue Smith and Kymlicka, to assume that minorities will readily be granted membership in such communities. Indeed, civic nations often require that ethnic minorities relinquish or privatize important elements of their distinctive identity 'as the price for receiving citizenship and its benefits' (Smith, 1995: 101). Thus, even though minority individuals have citizenship rights, the marginalization or repression of their cultures and attempts to assimilate their members can cause ethnonational conflict just as easily as ethnic nationalism – as happened, for example, with both the native Americans in the US and the Kurds in Turkey (Kymlicka, 1999: 132). In other cases, majorities may reject the voluntary assimilation of minorities, a reaction

that met Jewish attempts to assimilate in France (Smith, 1995: 97). By exploring empirical examples of communities based on the civic model, Smith and Kymlicka offer a serious challenge to claims that the civic nation is inherently conducive to minority membership and therefore normatively superior to communities based on the ethnic model.⁴

Taking the criticism of the civic nation a step further, Bernard Yack and Kai Nielsen find the concept so ideologically loaded and empirically unconvincing as to be of little analytical use. According to Yack, the definition of civic nationhood as a 'rational and freely chosen allegiance to a set of political principles' reflects a 'mixture of self-congratulation and wishful thinking' (Yack, 1999: 105). It is less an analytical tool than a liberal project to 'find and preserve a form of national community that is compatible with liberal political commitments' (1999: 115). While expressing sympathy with the envisioned goal, Yack argues that the relationship between inherited culture and political principles is so deeply intertwined as to make a dichotomy based on nations of choice versus nations of inheritance untenable:

It may be reasonable to contrast nations whose distinctive cultural inheritance centers on political symbols and political stories with nations whose cultural inheritance centers on language and stories about ethnic origins. But it is unreasonable and illegitimate to interpret this contrast as a distinction between the rational attachment to principle and the emotional celebration of inherited culture. (1999: 106)

Thus, according to Yack, the category of 'civic' nation offers a false distinction from other types of national community and is best categorized as a 'myth'. Nielsen also argues that the dichotomy between the civic and the cultural nation is insupportable, observing that '[t]here is no purely political conception of the nation, liberal or otherwise' (Nielsen, 1999: 127). Given the necessary relationship between culture and national community, he concludes that '[t]alk of civic nationalism had better be dropped from our political vocabulary (including the vocabulary of political theory), if we wish to be clear and coherent in our analyses in the real world' (1999: 127).

b) Relevance of the Czech case for an investigation of the civic nation

One of the key problems that the scholars surveyed above find with the traditional conceptualization of the civic nation is that some analysts who use it are at the same time advocating it, at times seemingly without regard to real cases that undermine their broad normative claims. This issue of overlapping analysis and advocacy is worth expanding upon here, as its application to the Czech case leads in an interesting direction. In this regard, Rogers Brubaker and Frederick Cooper develop a persuasive cautionary argument concerning the use of terms that are at once 'categories of social

and political *practice*' – or terms that are used in everyday experience and in the construction of political ideologies and argumentation – and 'categories of social and political *analysis*' (2000: 4, emphases in original). The problem that Brubaker and Cooper identify is that analysts may conflate ideological representations, empirical observations and conceptual categories and thereby reify and reinforce particular ideological constructions of such terms as 'identity' and the 'nation' (see also Zubrzycki, 2001: 360). This brings me back to the case at hand. According to critics, analysts often use the concept of civic nationhood to prod states into adopting it as a model, and members of states that are based on the model invoke it to congratulate themselves on an idealized vision of their political communities. Here the Czech case offers an interesting twist. There is no doubt that the Czech constitution is based upon the 'civic principle' whereby the 'free and equal citizen' provides the foundation of the state. From an analytical perspective, therefore, the new political community falls under the category of a civic nation. At the same time, neither the constitution nor the country's leaders *claim* to have established a civic nation; no nation at all is invoked in the state's founding document. I will argue in this article that the existence of a Czech nation with ethnocultural and historical moorings is nevertheless strongly implied, but not given formal political standing in the constitution. Moreover, post-communist Czech governments have been widely criticized by international observers and domestic human rights groups for their treatment of the state's Roma minority. In the Czech Republic, the kinds of tensions between universal citizenship norms, on the one hand, and the dominance of a particular ethnonational majority and unequal treatment of a minority, on the other hand, that critics of the traditional conception of civic nationhood highlight do exist, but *without* the claim of civic nationhood. I propose that the absence of this claim allows us to step back from the question of what really constitutes a nation, wherein, as Yack argues, it is difficult – if not impossible – to untangle the bonds and identities produced by political ideas from those that are cultural and historical. The Czech case is thus promising in terms of the theoretical reassessment of civic nationhood because it unlinks the concept's two central elements: the civic and the national. Once we retreat from the claim that the use of the civic principle in itself produces a category of nationhood, we can refocus on the question of the civic principle's relevance for structuring the relationship between the state and a diverse citizenry and thereby assess whether the descriptive term 'civic' retains some theoretical significance for categorizing communities.

In this article, I argue that it does. It is my view, following Ronald Beiner, that the adjective 'civic' need not imply that culture is 'politically irrelevant' in a particular community and, moreover, that shared citizenship offers a way of 'transcending' cultural differences and 'preoccupations' (1999: 14). It is useful here to return to the *sine qua non* of the traditional definition

of civic nationhood: a citizenship based on political rather than prepolitical criteria. Moving forward from this core (but away from some traditional theorists), I would argue that what is essential to the resulting community's nature is neither the absence of any cultural, historical or linguistic ties, nor its members' exclusive identification with political principles, but the equality of the individual inherent in universal citizenship. It is this equality that fundamentally defines the relationship between the citizen and the state as well as the political relationships within the citizenry. Thus, I propose that 'civicness' can be measured as the extent to which the community of citizens actually accords equality of membership regardless of concurrent pre- or sub-political identities or memberships such as those based on race, class, ethnonationality, religion or gender. In other words, the higher the level of civic equality, the more 'civic' the community – although clearly no community will ever be purely civic according to this measure.

One way of applying this measure is to look at the status of groups within the political community that have a different ethnocultural identity from the society's majority. To do this in the Czech case, I draw on a model of the different dimensions of the relationship between the state and its minority citizens offered by Ivan Galal in his analysis of the problems of Roma integration in the Czech Republic. It is my view that Galal's four dimensions represent progressively higher levels of membership in the community of citizens: the first involves 'negative protections against violent discrimination and persecution' based on minority status (1999: 74); the second dimension concerns 'protection against nonviolent discrimination' through 'the guarantee and full enforcement of civil and human rights even for members of minorities' and the maintenance of a fundamental equality of opportunity for minorities to participate in the public, political, social, economic and cultural areas of the society's life (1999: 74–5); the third dimension involves state protection of the 'right to self-fulfillment and development of one's own ethnic, national, or cultural identity' (1999: 75), wherein Galal focusses on the 'internal life of the minority community'; and the fourth and final dimension involves 'the full integration of the minority into the society' and the opportunity for mobility in 'all positions and levels inside the majority society' (1999: 75). It appears to me that this measure assesses the realization of two key political principles: civic equality and freedom from state interference sufficient to sustain and develop individual or community identities. This freedom is a necessary correlate to equality on the scale of membership because a community based on universal citizenship should in principle neither privilege certain ethnocultural groups nor require ethnocultural conformity beyond certain limited bounds (such as, for example, a common language in the political sphere, knowledge of the community's history and curtailment of cultural practices that are legally prohibited).⁵

In the following case study of the relationship between the Czech state and its Roma minority, I use these dimensions to assess the extent to which the regime's foundation upon the 'civic principle' has produced a 'civic' political community. I thereby attempt to further substantiate the validity of criticisms holding that the use of the civic principle neither ensures the cultural neutrality of the state nor guarantees all citizens equal membership in a civic 'nation'. At the same time, I hope to demonstrate that the term 'civic' nevertheless remains useful for analyzing and classifying types of community because it offers a standard for evaluating the terms of membership, and boundaries thereto, in a polity based on universal citizenship.

Before proceeding, I would like to stress that, in focussing on the Czech government's responsibility for securing the Roma's civic equality, I do not wish to understate the complexities of the relationship between the Roma minority and the ethnic Czech majority. Integration and constructive civic co-existence require effort from both sides, but the scope of this article precludes a discussion of the all the dimensions of this problem. I therefore limit myself to addressing the state's role in guaranteeing equal membership for all its citizens.

PART II: THE FOUNDATIONS OF THE CZECH POLITICAL COMMUNITY

a) Historical context of Czech perspectives on the civic principle and the nation

Looking back over the development of Czech political thought from the mid-19th century onwards, it appears that there are two powerful traditions concerning the legitimacy and relative priority of the 'civic principle' as a foundational element of political community. The perspective of the post-communist regime's liberal founders and defenders, which accords all citizens equal rights and full political membership, has a pedigree that can be traced back to one of the Czech nation's 'fathers', the journalist and democratic activist Karel Havlíček (1820–56). His contribution to the 'Czech national awakening' included influential essays on the nature of a just political community, which he envisioned as a voluntary association of free and equal individuals, bound together by a rational rather than an organic bond. This view of the autonomy and equality of the individual strongly influenced the 'founding father' and first president of the first Czechoslovak state (1918–38), Thomas Garrigue Masaryk (1850–1937), and thereby contributed to the First Republic's political-philosophical underpinnings. Further, many Prague Spring reformers and, after them, Charter 77 dissidents (including current President Havel) called for a return to

meaningful citizenship, whereby the government's legitimacy derives from the consent of the entire citizenry and its power is limited by the civil rights of the individual. The new Czech regime thus reflects continuity with this enduring tradition in Czech political thought.

At the same time, the exclusive use of the civic principle has no precedent in Czech state-building. A second tradition of political thought that both defines the Czech nation in ethnic terms and views it as the proper source of state sovereignty has always existed alongside – and in some tension with – the more civic tradition. Although it demonstrated a strong commitment to individual rights, the First Republic was based on the ethnic principle, with the Czechoslovak nation enjoying elevated 'state-forming' (*státovorn*) status. Thus, while all citizens of the First Republic were constitutionally guaranteed equal protection by the law, the minority nationalities did not have the same relationship to the state as members of the Czechoslovak nation. Moreover, in practical terms, this nation's constituent elements did not enjoy equal status to one another. As David Paul argues, the Czechoslovak nation was to embody 'the best elements of the Czech tradition' (1979: 216). In the view of the state's founders, membership of such a nation would gradually elevate the lesser developed Slovaks to the level of their Czech co-nationals. The traditional bases of Slovak national identity were therefore expected largely to give way to this Czech-dominated identity. The short-lived Third Republic (1945–8) was also based on an ethnic conception of nationhood that served to justify the brutal postwar expulsion of the Sudeten Germans and some ethnic Hungarians from the state's territory (acts whose political repercussions continue to this day). Finally, although the communist state's leaders hoped to overcome national divisions through the development of a socialist political identity that would overarch and eventually supplant ethnolational identity, Slovak nationalism's tenacity and its assertiveness in the 1960s provided evidence of the failure of this project and led to the state's federalization along ethnic lines.

Thus, the post-communist Czech leaders' decision to jettison the ethnic definition of sovereignty that had undergirded each preceding Czechoslovak regime (and even justified ethnic cleansing after the Second World War) in favor of a purely civic one represents a striking divergence from a longstanding element of the Czech political tradition. The fact that the liberal elements of Czech political culture have always co-existed in some tension with an ethnic understanding of nationhood, combined with historical patterns of Czech political and cultural dominance within the common Czecho-Slovak state, provides an important context for an exploration of the boundaries of membership in the new political community. It also offers some insight into why the post-communist Slovak leaders reacted so negatively when the Czechs scolded them for elevating the ethnic principle over the civic in the frustrating debates over post-communist

state-building. Ultimately, the two nations' incompatible visions of the future state – which the Czechs saw as a strong federation and the Slovaks as a confederation of sovereign nation states – led to deadlock and the 'velvet divorce'.

b) Defining the new Czech political community

The constitution I turn now to a closer examination of the constitutional definition of sovereignty that provides the foundation for the new Czech state. As I stated in the introduction, the preamble to the Czech constitution finds the state in the name of 'We, the citizens of the Czech Republic in Bohemia, Moravia and Silesia'. Both the lack of any mention of a nation in the document and the relative ease with which the source of sovereignty is defined are very unusual in the post-communist Central and Eastern European context. For example, constitution-building in both ethnically mixed Slovakia and largely homogeneous Poland (the Czech Republic's northern and southern neighbors) was marked by intense debates over whether the entire citizenry or the dominant ethnic nation should be named as the state's founding entity. In the end, neither state adopted the civic principle: Slovakia used an ethnic definition, while Poland produced 'an ambiguous if not contradictory definition of the nation' that attempted to combine the civic and ethnic principles (Zubrzycki, 2001: 636). In the Czech Republic, however, there was relatively little debate over the proper source of state sovereignty. The dominant perspective conformed to then Prime Minister Václav Klaus's statement that the 'foundation of the state is the free citizen' (1992). Pavel Peška, the director of the Department of Constitutional Law at Charles University, objected that '[i]t is absurd, even though the civic principle is rightly emphasized, that the existence of the Czech nation would not be mentioned in the entire constitution' (1992). The main resistance to the constitution's definition of sovereignty came, however, from representatives from Moravia who argued that Moravian national identity was not properly recognized (see, for example, 'Komise ČNR o návrhu ústavy', 1992). During the parliamentary debate over the constitution, the Movement for Self-Governing Democracy-Society for Moravia and Silesia (HSD-SMS) deputy Jiří Bílý proposed that the phrase 'civic society' (which the document's preamble pledged to respect) should be supplemented by the phrase 'proceeding from the principle of the equal rights of nations' because 'states are established not by citizens, but by nations' (Parliament of the Czech Republic, 1992b). His fellow deputy from southern Moravia Jiří Drápela (Liberal Social Union) also asked that the constitution open with the words 'We, citizens of the Czechomoravian [českomoravské] Republic in the Czech lands, in Moravia, and in Silesia' (1992b). Interestingly, this was the only proposed revision of the preamble's opening words and it remains within the boundaries of the civic model.

Vice-Premier Jan Kalvoda argued against the Moravians' proposals, declaring that the rights of nations 'have no place at the head of the constitution' (1992b). Kalvoda's position won out and the constitution was passed without the Moravian amendments.

Clearly, therefore, the Czech Republic is founded on the civic principle. At the same time, it is important to note that the new constitution states explicitly that the new political community represents a 'renewal of an independent Czech state', true to the traditions of the ancient Czech crown lands as well as the previous Czechoslovak states (see Bakke, 2001). Given both the ethnic foundations of these states and the traditional definition of the Czech nation according to ethnic criteria, it is difficult to argue that the ethnic Czech national identity does not have a special and defining relationship to the new republic. Indeed, the political discourse sometimes points to such a relationship. For example, former Czech Prime Minister Miloš Zeman's speech on the 80th anniversary of the founding of the First Czechoslovak Republic opens with the salutation 'Esteemed fellow citizens', but then proceeds to speak about the situation of 'our nation' during the 19th century when it was nearly assimilated under the pressure of 'stronger neighbors' and almost lost 'its most precious cultural value, its own language' (Office of the Government of the Czech Republic, 1998). Still, the constitution neither grants the Czech nation formal dominance nor privileges its language as the 'state language' – a critical issue in Slovak constitution-building. The new state is rather to be the 'home of the free and equal citizen'.

Citizenship law As the citizen was the new state's primary rights-bearing entity, the question of who may be granted citizenship was of defining importance to the character of the new political community. According to the Law on the Acquisition and Loss of Czech Citizenship (passed on 29 December 1992), only those who held 'Czech citizenship' in the Czechoslovak state were entitled to automatic citizenship in the new state. This 'Czech citizenship' was based on citizenship laws that accompanied the 1969 federalization of the communist state, under which all Czechoslovak citizens were also given the designation of either 'Czech' or 'Slovak' according to their place of birth. Those born after the promulgation of these laws inherited their status from their parents. These new designations were, however, only relevant within the country: 'Czechoslovak' remained the internationally recognized citizenship. It was also a simple matter to change one's designation if one moved to the other republic.⁶ The designation was not printed on passports or similar identification and had 'no relationship to any rights, privileges, or duties' (CSCE, 1996). This 'citizenship's' lack of significance is reflected in a December 1992 article in the Slovak *Pravda*, which asked, 'Do you know whether you are a citizen of the Slovak Republic or the Czech Republic?' (see 'Narodili ste sa na Slovensku?', 1992).

While the law gave automatic citizenship to Czech citizens, those deemed Slovaks by the 1969 law were considered foreigners who had the right to apply for citizenship according to 'marginally less restrictive conditions than those which apply to other potential immigrants' (CSCE, 1994). These requirements proved to be a particularly serious barrier to Roma access to citizenship. Because nearly all the Czech Roma were murdered in the holocaust (or, in Roma terminology, the devouring), most Czechoslovak Roma were either born in Slovakia or have Slovak parents. Thus, even though only one-third of the 200,000–300,000 Roma living in the Czech Republic at the state's founding⁷ were born in Slovakia, according to the 1969 law they are mostly Slovak (Miklušáková, 1999: 267). For those who fell under this designation, a complicated bureaucratic process followed, involving municipal, federal and Slovak authorities. As Human Rights Watch reported, '[e]ven for educated people, the process was obtuse and confusing. But for many Roma, who suffer disproportionately from low levels of education and literacy, it was at times incomprehensible. . . . For many, the very notion of citizenship was confusing' (1996). Nongovernmental organizations (NGOs) stepped in to assist Roma applicants, but found that the authorities were not always cooperative and sometimes intentionally obstructive, misrepresenting rules or withholding details of appeal procedures (CSCE, 1994; Human Rights Watch, 1996).

By far the most important obstacles, however, were the law's two main requirements of a clean criminal record for five years and proof of two years' permanent residence. The clean record was particularly difficult as it did not take into account the severity of the crime. With Roma unemployment ranging from 70–90 percent in some areas (Office of the Government of the Czech Republic, 1997: 24), convictions for small-scale crimes such as robbery and theft are common, especially among young men ('How Many Forms Must a Czech Gypsy Fill in?', *Guardian*, 23 September 1994). Proving permanent residence has also proved difficult for the Roma as a housing shortage and the processes of privatization and restitution have complicated the post-communist housing situation. Many Roma live in apartments overflowing with family members, and local authorities are often unwilling to register all the inhabitants of illegally overcrowded dwellings.⁸

'As Czech officials admit', the CSCE reported in 1994, 'virtually every person excluded from Czech citizenship under the new law is a Roma'. Prime Minister Klaus responded to concerns about this differential impact by arguing that 'the conditions for obtaining citizenship are binding for all applicants who are citizens of other states, and do not apply to specifically designated groups of persons' ('V. Klaus píše Romům', 1993). This avowal of strict government neutrality has, however, come under serious scrutiny. While Human Rights Watch cautions that the charge is difficult to prove conclusively, there is evidence suggesting that the law was written 'with the

specific intent of hindering citizenship for Roma and facilitating their removal from the Czech lands' (1996). Much of this evidence came from interviews that the group conducted with a large number of people that had either fallen under the scope of the law or who had kept track of its effects.

Two further pillars appear to support this allegation. The first is an internal 1991 government document that addressed the possibility of the 'catastrophic scenario' of a mass influx of Roma into the Czech lands if the common state was dissolved. Portions of the report were leaked to the press in 1992, two aspects of which were subjected to particular scrutiny. One was the proposal that the government 'take advantage of the departure of useless individuals from enterprises, particularly for reasons of structural change, and of the moving away of citizens of the Roma nationality to Slovakia' ('Romská hrozba?', 1992). The second particularly controversial element was the government's stated plan, in the event of the state's dissolution, '[t]o take measures toward the prevention of the mass migration of Roma into the Czech Republic' ('Romská hrozba?', 1992).

The second pillar involves a series of developments during the latter half of 1992. As the state moved closer to dissolution, tensions grew in the economically depressed industrial areas of northern Bohemia between ethnic Czechs and the Roma communities whose numbers were growing because of migration of Slovak Roma to the area to live with family and friends. The representatives of several northern Bohemian towns responded by demanding that the Czech government 'grant state citizenship as well as the permanent residence status only with the concurrence of the municipalities' (Krasnický, 1992) and that 'Czech citizenship be granted only to people without a criminal record who were recommended by the municipality in which they resided' (Pehe, 1993: 20). It seems unlikely that it was a coincidence that the citizenship law reflected the Bohemian mayor's demands concerning both the clean criminal record and a role for municipalities in according citizenship.⁹

The citizenship law drew a fair amount of criticism both domestically and internationally. It was estimated that in July 1998, over five years after the law's enactment, at least 15,000 people had yet to legalize their residence in the state (Miklušáková, 1999: 522, n. 257 [endnote]). After several smaller modifications over the years, parliament passed a law in 1999 to allow former citizens of Czechoslovakia who have lived in the Czech Republic since 1993 to gain citizenship through a simple declaration. The Czech citizenship law thus finally shed its most controversial aspects. However, for the first six years of the Czech Republic's existence, the government pursued a policy that promoted the exclusion of the Roma from full membership of the new state. As Jan Rusenko, a member of the Roma Democratic Congress, saw it, the law was 'only an administrative way of separating the wheat from the chaff' (Šidlo, 1993). It thus appears that Czech citizenship policy may be an example of what Robert Hayden terms

'bureaucratic "ethnic cleansing"' (1992: 668). Any claims concerning the Czech state founders' strict adherence to the 'civic principle' must be assessed with this context in mind.

PART III: HOW CIVIC IS THE CZECH REPUBLIC? DIMENSIONS OF CIVIC EQUALITY IN THE 1990S

I turn now to the question of how successfully the Czech Republic has realized its foundational civic principle in terms of the provision of equal membership to citizens belonging to the Roma minority, which I gauge according to Gabal's (1999) four dimensions of minority integration. Although space prohibits a full exploration of the complex issues involved in each of these dimensions, I expect that an overview of these issues will be sufficient to establish whether or not the Czech Republic has met the requirements of these dimensions.

Dimension 1: does the Czech state protect its minorities from violent discrimination and persecution?

In 1996, Human Rights Watch observed that '[r]acist attacks – and the government's lack of response – are the most serious concern of Roma in the country today'. Six years later, the same remains true. The government's response has been particularly criticized for five tendencies: 1) when gangs of skinheads attack Roma, only a few individuals are actually prosecuted; 2) crimes are infrequently prosecuted under the provisions for racial motivation; 3) perpetrators are charged with lesser crimes than warranted by the seriousness of the attacks; 4) courts are biased in dealing with Roma testimony; and 5) police abuse of Roma is insufficiently punished, if at all (Office of the Government of the Czech Republic, 2001; European Roma Rights Center [ERRC], 1997b). In addition, observers point out that, because of their low level of education, many Roma have an inadequate understanding of the legal system, which leaves them 'open to abuse' (Human Rights Watch, 1996).

These disturbing tendencies are well illustrated by the tortuous government response to the 1993 murder of Tibor Danihel, a 17-year-old Roma. Danihel drowned after being chased into a river by a group of around 40 rock-throwing skinheads in the town of Pisek. According to various reports, the head of the district prosecutor's office, the judge in charge of the case and the deputy mayor all publicly made light of the crime, suggesting it was a prank that had gotten out of hand (ERRC, 1997a, 1998). When the case finally reached court (which was filled with skinhead observers), the charges were thrown out against most of the accused and only two were convicted

of 'damaging the health resulting in death', for which they were given suspended sentences of one year (Human Rights Watch, 1996). The verdict was annulled on appeal by the regional court and returned for further investigation. The new indictment again did not contain a murder charge against any of the four defendants, accusing them instead of a 'violation of civic co-existence' (ERRC, 1997a). In March 1997, the district court handed down sentences of 22–31 months for three of the defendants and a suspended two-year sentence for the fourth, sentences affirmed by the regional court in June 1997. In February 1998, the supreme court ordered a retrial, stating that the light sentences constituted an 'abuse of the law to the benefit of the accused' (RFE/RL, 1998). Finally, in June 1999, three skinheads were convicted of racially motivated murder and attempted murder and sentenced to prison terms ranging from six-and-a-half to eight-and-a-half years (RFE/RL, 1999b).

According to Hana Fristenská, the Czech government's response to 'interethnic violence' has developed in several stages. The first (from 1990–92) was characterized by a 'complete lack of reaction to the growing intensity of racist violence' (1999: 249). During the second stage (from 1993 to the first half of 1995), the government came to understand that conditions were worsening, but failed to fully recognize the relationship between the Roma's situation and the attitudes of the majority society (1999: 251). The next turning point came in the second half of 1995, largely as a result of widespread outrage at the light sentences handed down to a group of skinheads who beat to death a Roma named Tibor Berki in front of his family. The state was thus prompted to tighten its policies on racially motivated violence. Two years later, however, when a stream of Czech Roma left the country to apply for refugee status in Canada and the UK, many referred in their applications to the lack of police protection from skinhead violence. In October 1997, the Czech government published a report (often referred to as the 'Bratinka report') on the situation of Roma in the country, which included a number of recommendations to improve the situation. Its proposals included: 1) the minister of the interior screening candidates for the police force for prejudice and racism; 2) admitting as many Roma candidates as possible to police training schools; 3) preventing the formation of groups based on racial or ethnic intolerance and fascism; and 4) securing financial support for programs aimed at the prevention of criminality and drug dependency in the Roma community (Office of the Government of the Czech Republic, 1997, 'Návrh usnesení': 2–3¹⁰). In addition, the report proposed that the Ministry of Justice closely follow racially motivated crime and inform the government regularly about observed trends (1997, 'Návrh usnesení': 4).

The central government's various efforts did lead to some improvements. Even before the Bratinka report, the European Commission against Racism and Intolerance (ECRI, a body of the Council of Europe) noted

that the prosecution of racially motivated crime by the government had shown a 'marked improvement over recent years' (1997: 9). At the same time, ECRI stated that neither police enforcement nor sentencing policy had been particularly vigorous or consistent. Moreover, observers reported that the denial of equal protection continued to occur primarily at the lower levels of the criminal justice system.¹¹ As Roma activist Ondrej Gina told the Canadian Immigration and Refugee Board, while 'Roma are equal to other citizens in the eyes of the country's constitution and laws ... in practice it is difficult and sometimes impossible for Roma to obtain protection at the local or district level' (CRD, 1997d, from website). Human Rights Watch agreed with this assessment, reporting that Roma's rights are often violated in local 'police stations, courtrooms and administrative offices' (1997d, from website). ECRI has expressed concerns about 'the compatibility of local actions with national priorities' (2000: 11). It therefore appears that serious differences exist between central and some local government views on the legitimacy of civic equality as a guiding principle for practice in the criminal justice system.

With regard to dimension 1, it is clear that the Czech government has not succeeded in guaranteeing its minority citizens the most basic level of civic membership: effective protection from violent discrimination and persecution.

Dimension 2: does the Czech state guarantee protection for its minority citizens against non-violent discrimination?

Local government policies directed at the Roma Non-violent discrimination against the Roma is far more prevalent than violent discrimination; it has also been the subject of considerable debate and conflict in the Czech Republic. In particular, the specific targeting of local policies and decrees against Roma has sparked a number of confrontations between central and lower levels of government. The first occurred at around the time of the Czecho-Slovak 'velvet divorce', when the Jirkov city council passed a decree (which its members admitted was directed at the Roma) allowing authorities to evict people from apartments they deemed unsanitary or overcrowded (Human Rights Watch, 1996). The decree also placed restrictions on visitors to the city, requiring them to obtain approval from the town hall and limiting their stay to a week. A family could only have visitors twice a year and the police were given the power to enter an apartment where they suspected that unregistered guests were staying. The general prosecutor declared that the so-called 'Jirkov decrees' violated the Charter on Fundamental Rights and Freedoms, but no action was taken against the city authorities. Five other northern Bohemian towns quickly followed Jirkov's lead, adopting measures based on certain aspects of the decrees.

There have been a number of less dramatic controversies that have nevertheless drawn public attention to the issue of local government discrimination against Roma. In 1996, the mayor of Kladno was charged with inciting racial hatred after banning Roma children from a public swimming pool during a hepatitis outbreak (Lemon, 1996). His eventual conviction (after one acquittal) sparked a debate in the Czech press over the permissible scope of local policy (see, for example, Miroslav Korecký, 1996). In 1999, yet another scandal erupted when it was revealed that government employment offices had been marking Roma files with an 'R' as a signal to potential employers (Kim, 1999: 62); the policy was quickly prohibited (RFE/RL, 1999d).

Probably the most striking example of local government policy directed against Roma is the Ústí nad Labem wall, which became a topic of international scrutiny in May 1998. Reacting to complaints from ethnic Czechs living near a tenement building housing a large number of Roma families, a municipal council in Ústí nad Labem decided to build a wall in front of the Roma dwelling. According to Mayor Ladislav Hruska, the wall was 'not racially motivated', but intended to 'separate the decent people from those who are not' (RFE/RL, 1998). The central government responded by declaring the wall racist and discriminatory and ordered the council executive to reconsider the decision. The council reconsidered, but approved a resolution declaring that the decision did not violate Czech law. In October 1999, the Chamber of Deputies voted by a large majority to overturn the council's decision. That same day, however, the city moved pre-emptively to complete the project.

The wall's completion provoked renewed internal and international criticism, and President Havel called on the city to tear the wall down immediately (RFE/RL, 1999c). After negotiating with government leaders, the Ústí nad Labem council agreed to remove the wall in exchange for a 10m crown (about US\$285,000) subsidy from the Czech government, part of which reportedly went to buy out ethnic Czech families (RFE/RL, 1999a). While the removal of the wall did allay tensions, the matter was not closed. The local authorities appealed to the Czech constitutional court concerning the Chamber of Deputies' power to overrule local decisions and, in April 2000, the court ruled that the lower house of Parliament did not have this power (RFE/RL, 2000; Rusek et al., 2000).

The patterns of political conflict over the wall's legality again reveal serious tensions between central and local government perspectives on the boundaries of policy. Moreover, this conflict's resolution appears to reflect both confusion over the balance of power between the state and local government and the lack of a straightforward legal framework for challenging state-sponsored discrimination. It also leaves no clear precedent to guide local and national government through similar controversies in the future.

Education policy Another particularly important aspect of the second dimension of minority membership in the community of citizens is the protection of equality of opportunity. One of the most basic ways that such equality may be secured is through education. There is, however, a general consensus among Roma leaders, human rights activists and Czech government representatives that one of the most important reasons for the Roma's continuing marginalization is their very low level of education. According to official estimates, less than 20 percent of Roma students finish the ninth grade and less than 5 percent graduate from high school (US State Department, 2000). University graduation is accordingly even lower. There is also a consensus on the reason for this state of affairs: following a pattern of placement carried over from the communist school system, Roma children are 15 times more likely than non-Roma children to be sent to 'special schools' for those with serious learning disabilities (ERRC, 1999).

There is, however, no evidence that a higher proportion of Roma children have such disabilities than the rest of the population, except possibly within the small Vlachi group whose members sometimes marry within families (Gross, 1993). Nevertheless, the funneling of Roma children into these schools is 'often quasi-automatic' (ECRI, 2000: 15). There appear to be two main reasons for this. The first is their insufficient knowledge of the Czech language.¹² Reflecting their Slovak origins, many speak a 'hybrid Czech that includes elements of Slovak, Hungarian, and Romani and often uses Romani grammatical elements and cases' (CRD, 1997b, from website). Because the tests to determine whether a student should be sent to a special school are language-oriented, children who are not fluent in Czech are at a serious disadvantage.¹³ The second reason is cultural, as many Roma families (uneducated themselves) place little value on formal education. Teachers often react by placing Roma children at the back of regular classrooms where they are largely ignored by staff (Gross, 1993) and often abused by other children (ERRC, 1999: 50–1). Moreover, as Roma activist Karel Holomek observes, '[i]n school the children learn nothing of Roma history, let alone anything positive' (cited in Horejší and Slezáková, 1995). Many Romani children experience the regular curriculum as 'white history', 'white music', 'white customs' (New School Foundation, 1997: 1). Because of the pervasive sense of the classroom as a 'hostile, foreign environment', many Roma parents prefer that their children attend schools where there are many other Roma children (1997: 1). In fact, normal intelligence test results may be disregarded if the parents want the child transferred to a special school (CRD, 1997a). At the same time, an ERRC report offers numerous examples of parents being pressured to allow the transfer of the child (1999: 27–8). Moreover, both the Bratinka report and nongovernmental sources have condemned the placement tests as biased; as the ERRC has argued, they are 'dependent upon the projected cultural uniformity of the people tested' (1999: 33).¹⁴

Thus, although '[i]n theory, the procedure which governs sending children to special schools is colour blind' (CRD, 1997a), it has clearly created a de facto segregated school system (New School Foundation 1997). As Fristenská argues, the discrimination is 'systemic' (1999: 258) and has had a devastating effect on the Roma. Until a new measure was passed in late 1999, a person holding a degree from a special school was prohibited by law from further study in a regular secondary school.¹⁵ The prospects for graduates of a special school are limited to unskilled and poorly paying jobs (CRD, 1997a). This situation in turn produces and aggravates such problems as crime, high unemployment and drug abuse, marginalizing the minority politically while fostering their dependency on the state (New School Foundation, 1997). Indeed, as the ERRC report succinctly states, 'remedial schools create what they are designed to treat' (1999: 21). Moreover, the situation makes government-sponsored affirmative action difficult as there are almost no suitable Roma candidates for promotion (Uhl, 1996). This effectively enforces second-class citizenship on the Roma, as most are not prepared for the rights and responsibilities of full political membership. As state officials admit, the education of Roma children is one of 'the most fundamental problems' facing Czech society (Office of the Government of the Czech Republic, 1997, 'Předkládací zpráva': 3).

Access to privately owned public spaces One further indication that the state does not effectively protect its minority citizens from non-violent discrimination is the pervasive denial of access to public spaces, including restaurants, discos, hotels, cafes and bars. Although such discrimination is unconstitutional, the government has not provided its citizens with effective legal means to protect themselves against discrimination in the public sphere. In fact, there is no specific legal prohibition against the denial of services based on race or ethnicity in public spaces. When such offences are prosecuted, they are usually dealt with according to statutes against inciting racial hatred – a tactic that has proved relatively unsuccessful.¹⁶ The result is a public sphere in which constitutional principles are very often overridden by popular prejudice. ECRI has therefore called upon the Czech Republic 'to establish a comprehensive body of anti-discrimination legislation covering all fields of life and to implement it effectively' (2000: 4).

Based on the evidence presented above (which only skims the surface of these deep-seated problems), it is clear that the Czech Republic has failed to achieve the requirements of the second dimension of civic membership.

Dimension 3: does the Czech state secure the right to the self-fulfillment and development of minority ethnic, national or cultural identity?

Addressing this question may seem a bit odd given that security from neither violent attack nor non-violent discrimination exists for the Roma in the Czech Republic. Still, the importance of Romani cultural development should not be underestimated. As the Czech government states in its 2001 report on *Compliance with Principles Set Forth in the Framework Convention for the Protection of National Minorities*, the Ministry of Culture offers a subsidy program to promote 'development of cultural activities of persons belonging to national minorities with the aim to create conditions for preservation of their own cultural identity' (2001). Examples of such government-funded developments include several Roma publications and a museum of Romani culture in Brno (CRD, 1997b).¹⁷ Czech law requires that public television and radio grant access to minorities, although the decisions about when and how often programs air have been made by the station management (CRD, 1997b). Scheduling may therefore not be ideal from the standpoint of program producers. Jarmila Balážová, who has worked in Roma-themed media, also observes that programming during the 1990s offered a largely one-dimensional portrayal of the Roma (1999: 332). On a more positive note, Roma groups have organized an annual Khamoro festival, held in Prague, that celebrates Roma culture and addresses issues of importance to the minority such as women's role in society, co-existence with the majority population and the relationship between modern life and Roma traditions (RFE/RL, 2002b).

The Roma have also been active in forming groups to promote their own interests. During the post-communist period, a large number of Roma civic organizations have sprung up (122 were registered by December 1998) and five political parties have been registered as well (Vermeersch, 2001). A problem for these parties, however, is that the Roma population is too small to reach the 5 percent threshold for parliamentary representation. Roma politicians must therefore find room in other parties. Karel Holomek observes that unfortunately both the government and parliament sent very unwelcoming signals to the Roma in the early years of Czech statehood (1999: 305). He also argues that Roma representatives, who 'markedly differ and always will differ from the majority', face a difficult task in balancing the requirements of relating effectively both to their constituencies and to the larger society (1999: 309). At this time of writing, following the June 2002 elections, there are no Roma representatives in the Czech parliament (see RFE/RL, 2002a).

It appears, therefore, that the development of Roma identity does continue in the Czech Republic. Such development must, however, be seen in the context of the state's failure to secure the first two dimensions of

Roma membership in the community of citizens. Given the threat of violence and the pervasive non-violent discrimination directed against the Roma, assimilative pressures could be characterized as extreme. At the same time, assimilation is potentially unfeasible under current conditions given the racist character of the exclusion. Indeed, even Monika Mihaličková, the only Roma member of parliament from 1998–2002, has been repeatedly barred from entry to certain public areas in her own hometown of Brno.¹⁸

Dimension 4: has the Czech state provided the conditions for the full integration of the Roma minority into the majority society?

Taking the evidence offered above into account, the answer here is, simply, no. The government has, however, produced a new *Conception of Government Policy towards Members of the Roma Community Designed to Facilitate Their Social Integration* (Office of the Government of the Czech Republic, 1999). I turn now to this revised approach and to an assessment of its initial effects.

PART IV: THE NEW CONCEPTION AND ASSESSMENTS OF ITS IMPACT

As the 1990s moved towards a close and Roma continued to seek asylum in western countries, the Czech Republic came under increasing pressure, both internationally and from domestic human rights organizations, to address the Roma's situation. In particular, EU officials made clear to Czech leaders that an improvement in the state's relationship with the Roma would be one of the requirements for EU membership. To this end, an Inter-Ministerial Commission for Romani Community Affairs was established and set to work on drafting a new government strategy. In April 1999, the government approved the *Conception of Government Policy towards Members of the Roma Community Designed to Facilitate Their Social Integration*. In a marked departure from the Bratinka report's approach, which had emphasized strict state neutrality with regard to the ethnocultural identity of its citizens and which dealt with the Roma as a disadvantaged social group rather than an ethnic minority,¹⁹ the Conception takes as its goal the Roma's integration into a 'multicultural society'. The Conception sets 12 tasks for the government to undertake in the next two decades: 1) the elimination of discrimination; 2) affirmative action (or 'positive discrimination'); 3) guaranteed minority individual and group rights; 4) the incorporation of Roma culture and history into the general

education of all children; 5) education reform to allow Roma children full equality within the system; 6) Roma participation in decision making on Roma community affairs; 7) the provision of free legal, social and psychological counseling; 8) education at all schools in tolerance 'aimed at building a multicultural society'; 9) instruction for judges and those working in the judicial system on issues regarding racism and Roma affairs; 10) research on methods of ethnic co-existence; 11) subsidy of non-profit groups that offer social education programs to Roma youth; and 12) an employment policy that decreases Roma unemployment while placing more emphasis on 'people's positive motivation to work'.

While the Conception offered a vision of sweeping reform, the version that was ultimately enacted in June 2000 was 'severely weakened' (ERRC, 2002). The number of tasks for ministries was significantly reduced, the plan to assist Roma businesses was discarded, and a proposal to establish an Office of Ethnic and Racial Equality with the power to issue legally binding rulings on racial discrimination cases was rejected in favor of an advisory role for the Inter-Ministerial Commission for Romani Community Affairs (Sobotka, 2001). Moreover, although the Conception set a December 2000 deadline for a review by eight ministries on the question of how to strengthen anti-discrimination laws, the deadline was missed. The ERRC reported to the UN in mid-2002 that it could not discern any progress in the fulfillment of this task, attributing this to 'the Czech Government's apparent lack of real will to make substantive improvements' (2002).

Doubts concerning the government's claim to embrace a new approach towards the Roma were also raised by the *Conception of the Ministry of Foreign Affairs in Relation to the Romani Problematic*, published in December 2000. The document sets out several goals for the Ministry of Foreign Affairs: the first is the 'Europeanization' of the Roma 'problematic' (to be accomplished by promoting the idea that both the problems of the Roma and their solution should be explored in a multinational European context);²⁰ the second point suggests that the positive measures that the Czech Republic has taken should be emphasized abroad; the third that criticisms of the country's treatment of the Roma should be rejected (the document explains that this does not involve the assertion 'that racism and cases of discrimination do not exist here, but only the rejection of interpretations suggesting that just these phenomena are the fundamental cause' of the problems of Roma co-existence with the 'majority society'); a fourth point concerns the 'distorting description of the Roma problematic exclusively in terms of human rights' (according to the document, human rights are only one aspect of the problem and 'not at all a pivotal aspect. The Roma problematic is first and foremost a social problematic'). The tone of this conception is clearly quite different from that passed by the government, and its contents have been described as 'cynical' (Sobotka, 2001).

In May 2002, the Czech Helsinki Committee published a report on

human rights in the Czech Republic in 2001. According to the report, between 70,000 and 100,000 Roma have now emigrated. The reasons for this vast migration indicate the persistence of the problems outlined above: racist violence and widespread discrimination in the systems of criminal justice, public administration, the provision of services, education (and particularly the 'segregation' of Roma children in special schools), as well as in employment and housing (Czech Helsinki Committee, 2002). Moreover, the answer to the question of what the émigrés hoped for in their new homes abroad was almost always the same: 'a dignified life' (2002).

CONCLUSION: SOME IMPLICATIONS OF THE CZECH CASE FOR THE CATEGORIZATION OF COMMUNITY

Based on the evidence presented above, I conclude that Roma citizens have not been granted full membership of the Czech Republic. They do not enjoy substantive civic equality and, while their freedom to develop their identity is of a higher level, its worth is diminished by pervasive discrimination and fear of violence. According to the measure I employ, the Czech political community's level of 'civicness' is very low. At the same time, the state's constitutional incorporation of the civic principle is neither irrelevant nor inconsequential, as it provides the basis for demands that the government and citizenry respect and protect civic equality. It also offers a solid foundation for a framework of civil rights law (an underused potential in the Czech Republic). The constitutional protection of civic equality thus provides a stronger recourse for besieged minorities than a regime that incorporates any kind of stratification of citizenship based on prepolitical criteria.

Ultimately, I would categorize the Czech Republic as a political community based on the civic principle that has largely failed to realize the principle's requirements. I further propose that a designation such as 'political community based on the civic principle' may profitably be substituted in other cases where the term 'civic nation' would traditionally have been applied, for three reasons. First, although this designation does not offer the kind of neat oppositional counterpart to the 'ethnic nation' that the concept of the 'civic nation' does, it provides a way of distinguishing between communities of citizens and ethnic nations – a distinction that remains relevant and necessary. While the ethnic nation refers to a type of prepolitical community that may exist under a variety of different political circumstances, a community based on the civic principle requires a political configuration that secures the equal provision of rights and duties for the entire citizenry. These are clearly very different types of community even if they co-exist within the same state (as they do in the Czech Republic).

Second, it leaves open to question the relationship between what is claimed and/or attempted in a particular state and what has been accomplished. This avoids one of the key problems with the concept of the civic nation; namely, that it not only indicates the use of the civic principle, but also implies that such use has in fact produced a community that is best characterized as a nation. As the debate I surveyed in Part I indicates, such a claim is open to numerous challenges, particularly with regard to the purported neutrality of the state in relation to the citizenry, the relative importance of culture versus political ideas and practices in providing the bonds of such a nation, and the openness of such nations to ethnocultural minorities. The validity of these challenges is further substantiated by the Czech case. And, finally, although it is probably impossible to construct a political system that fully realizes civic equality, assessing gradations of success towards this goal does offer some insight into the nature of membership and community in a polity based upon the principle of universal citizenship.

This is not to argue that the concept of the civic nation can never appropriately be applied; it is possible that a community based on the civic principle that fulfills all four dimensions of civic equality discussed above could offer a level of equal membership that rises to the level of nationhood. The Czech case simply does not throw light on this matter. It is, however, an example of a political community in which a full exploration of questions of membership requires an analytical framework that both recognizes the importance of founding principles and allows for a distinction between these principles and political practice.

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Notes

- 1 Michael Walzer (1994) provides a similar account of the civic nation.
- 2 According to Nicholas Xenos, 'It is safe to say . . . that for all the theorists of civic nationalism, a normative commitment to liberal democracy underlies their scholarly projects, and thus that there is a political thrust to their work' (1996: 215).
- 3 In the American case, Xenos points particularly to Lincoln's Gettysburg Address (1996: 225-8).
- 4 While Smith continues to use the concepts of civic and ethnic nations, albeit with the above qualifications attached, Kymlicka has in recent writings moved away from it, preferring to differentiate between liberal and illiberal types of nation building. For his earlier position, see Kymlicka (1995: 24) and, for his more recent position, see Kymlicka (2000).
- 5 In defining the boundaries of permissible state policy in promoting elements of

common identity, I draw here on Kymlicka's definition of liberal nation building (2000).

- 6 This remained the case until the end of 1992, which caused a rush of applications for Czech citizenship before the dissolution of the Czecho-Slovak state (see 'Thousands of Slovaks Seek Czech Citizenship', 1992).
- 7 The number of Roma in the Czech Republic is disputed, as only slightly under 33,000 people declared Roma ethnicity in the 1991 census. It is clear, however, that the numbers are much higher. The population of the Czech Republic is about 10 million (see CSCE, 1999: 53).
- 8 Recognizing this problem, the Czech constitutional court ruled in 1994 that 'permanent residency means actual residency and not one that is reflected only in official files'. Nevertheless, many authorities continued to demand formal documentation (Human Rights Watch, 1996).
- 9 According to information provided to the Canadian Immigration and Refugee Board by Ladislav Zamboj, a representative of the Prague-based Tolerance Foundation and the Citizenship Counseling Committee of the Czech Helsinki Committee, roughly 50 percent of applicants were not recommended for citizenship by municipal authorities. The Ministry's authorities were not obliged to follow this recommendation, but they did cite the recommendation when rejecting an application (CRD, 1997c).
- 10 The pagination of the Bratinka report begins anew in separate sections. I therefore also include the name of the section I am citing.
- 11 The Czech Republic has two separate police forces: the national and the municipal. They function independently, under different regulations, and have different areas of competence. The national police force operates under the Ministry of the Interior's Police Presidium, while the municipal police are managed by city councils.
- 12 As a recognized minority nationality, the Roma are entitled to education in their own language. This is not, however, a right that Roma leaders have been interested in realizing. As Jan Rusenko of the Roma Democratic Congress stated, 'We do not have an interest in purely Roma schools. If children leave the eighth grade speaking only Romani, it would be like graduating from a special school' (Šidlo, 1993).
- 13 Addressing this problem, the October 1997 Czech government report stated that '[i]n the matter of psychological examinations it is necessary to explicitly reject' the designation of 'linguistic handicaps' as a 'kind of mental handicap' (Office of the Government of the Czech Republic, 1997, 'Předkládací zpráva': 15).
- 14 The ERRC report offers an illuminating example of a question 'in which a child was evaluated as mentally handicapped among other things because he could not state that "knife", "fork" and "spoon" belong to the category of "cutlery", although the word is not in common usage among Romani families' (1999: 33).
- 15 In December 1999, legislation was passed allowing qualified Roma students to re-enter mainstream secondary and upper-level schools. According to the US State Department (2000), the 'legislation was drafted by Parliament's sole Romani representative and constituted a significant step in opening access to higher education to the Romani minority'.
- 16 See, for example, the case of Ivo Blahout, as discussed in US State Department

- (1999), 'Vyhozov z rokycanské hospody' (1996) and Ludmila Hegnerová (1996).
- 17 For further details on the Ministry of Culture's role in supporting Roma cultural development, see Office of the Government of the Czech Republic (1997, 'Predkládaci zpráva': 20–3).
- 18 Monika Mihaličková filed a civil suit against a club owner who refused her entry and won (Erlanger, 2000).
- 19 The Bratinka report uses the term 'Roma community' rather than 'Roma minority nationality'. It explains this choice of terminology by pointing both to the low levels of official self-identification with the Roma nationality in the 1991 census and to
- the reality that what we are dealing with is not problems of nationality politics (preservation of language, schools in the native language, etc.), but with social problems (low living standards, high unemployment levels, etc.). Also, the most current needs and demands of the Roma are not political demands, as are characteristic of other minority nationalities in the Czech Republic, but rather demands for specific forms of societal, including social, assistance. (Office of the Government of the Czech Republic, 1997, 'Důvodová zpráva': 1)
- 20 Sobotka (2001) offers a photocopy of the Ministry of Foreign Affairs document in her online article. The translation is mine.

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