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Social & Legal Studies 2012 21: 375 originally published online 30 March 2012

DOI: 10.1177/0964663911429152

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Social & Legal Studies

21(3) 375–393

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DOI: 10.1177/0964663911429152

sls.sagepub.com**István Pogány***University of Warwick, UK***Abstract**

Weber described Roma and Jews as ‘pariah peoples’, that is, as communities characterized by ‘political and social disprivilege’, ‘far-reaching distinctiveness in economic functioning’, and ritual separation from mainstream society. Weber’s concept remains surprisingly relevant today as a tool for understanding the problems experienced by Roma in the CEE area, particularly since the end of communist rule. As at the turn of the 20th century, Roma in the region form a marginalized and acutely disadvantaged minority. In economic terms, the Roma exhibit a high degree of distinctiveness, while the minority remains in a state of *de facto* as well as ritual separation from mainstream society. Weber’s concept can also help us to make sense of the multiple failures of law to redress the problems experienced by Roma in the transition from communism. In fact, as Weber would have immediately recognized, many post-communist constitutions have substituted legal for ritual forms of separation between Roma and non-Roma.

Keywords

Central and Eastern Europe, human rights, pariah peoples, Roma, transition, Weber

Introduction

In the early years of the 20th century, Max Weber famously described Roma and Jews as ‘pariah peoples’ (Weber, 1920/1958: 13). Weber’s use of this term was not intended to

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be pejorative. Rather, Weber employed it to distinguish communities characterized by the loss of 'residential anchorage', by 'political and social disprivilege', by 'a far-reaching distinctiveness in economic functioning', and by ritual separation from mainstream society (1922/1968: 492–500).

Weber's rather idealized notion of the Roma as an ethnic community possessing a distinct culture and practising self-segregation suggests a limited understanding of the diversity and complexity of Roma identities by the early decades of the 20th century (Crowe, 1996; Fraser, 1992/1995: 190–237). While broadly accurate as a description of many traditional Roma sub-groups of the period, Weber's 'pariah peoples' concept ignored both the impact of long-standing policies directed at integrating or assimilating Roma in parts of Europe (Crowe, 1996: 74–78), and the desire of a significant proportion of Roma to merge with their host communities. Instead of portraying the Roma as culturally or economically homogeneous, researchers have emphasized critical distinctions. For example, in 1961, policy makers in Hungary noted that the country's Roma fell into three separate categories: (1) Roma who had completely abandoned their traditional lifestyles, assimilating fully within the majority community and therefore no longer distinguishable from them, either socially or economically (30%); (2) Roma who were partially integrated but who remained residentially segregated and economically disadvantaged, subsisting mainly from poorly paid casual work (30%); and (3) non-integrated Roma who were mostly illiterate, lacked conventional 'employment' and who frequently changed their place of residence (40%) (Bencsik, 1988: 9). Although the proportion of Roma in each of these categories has differed from country to country in Central and Eastern Europe (CEE) and from one generation to the next, these categories were already well established when Weber formulated his 'pariah peoples' thesis (Crowe, 1996).

In the present day, the overwhelming majority of Roma in the CEE area no longer live lives that are rigidly circumscribed by their ancestral cultures (Barany, 2002: 112ff.; Guy, 2001). For example, although notions of ritual separation may once have played a decisive role in Roma communities (Fraser, 1992/1995: 244–246; Okely, 1983: 206–212), such practices are now far less common in the CEE region (Barany, 2002: 13; Pogány, 2004: 33–34). As Barany notes, 'most East European Gypsies no longer live by the old customs; they are not, as it were, "orthodox Roma"' (Barany, 2002: 13). The notion that the Roma routinely observe rites of ritual separation is empirically false and invests the Roma with a spurious aura of exoticism.

Most Roma in the CEE area have not only shed many features of their traditional lifestyles, they have also embraced numerous characteristics of the dominant national or local cultures (Barany, 2002: Chapter 4; Pogány, 2006a: 337–341). In Hungary, for example, over 90 per cent of Roma regard Hungarian as their mother tongue and can no longer speak *Romanes*, their ancestral language (Marushiakova and Popov, 2001: 38–39). These patterns of cultural and linguistic change amongst the Roma of the CEE area have been accompanied by the transformation of their economic, social and political conditions, particularly in the communist and post-communist periods. Both the introduction of state socialism in the CEE region after World War II and the dismantling of the socialist order in the 1990s have had a profound impact on the Roma.

Yet, despite massive changes in the economic, social and political features of Roma minorities – and in the CEE societies themselves – Weber's designation of the Roma as a

'pariah people' remains fully warranted. In fact, Weber's 'pariah peoples' concept has become *more* not *less* valid as a description of much of the contemporary experience of Roma in the CEE area. Thus, the lives of most Roma in the region continue to be characterized by massive 'political and social disprivilege' as well as by 'far-reaching distinctiveness in economic functioning' (Mirga, 2009; Ringold et al., 2005). If the *ritual* separation of Roma and *Gadje*, or non-Roma, is less pronounced than it was when Weber developed the 'pariah peoples' concept, it has been replaced by *secular* modes of separation, in which law, particularly new constitutions in the CEE area, play an important part. Finally, the Roma continue to lack either 'autonomous political organization', that is meaningful powers of self-government, or a 'residential anchorage'. The latter term, as used by Weber, can be understood both in *economic* as well as *political* terms, that is, as extensive land holdings *and* as territorial autonomy or statehood.

Although Weber's 'pariah peoples' concept was developed almost a century ago, it offers an excellent theoretical framework for identifying and interrogating the economic, social and political problems experienced by Roma in the CEE area (Mirga, 2009; OSCE, 2000).

Weber's 'Pariah Peoples' Concept

In *The Religion of India*, Weber sets out his concept of 'pariah peoples' in the following terms:

The purest form of this type is found when the people in question have totally lost their residential anchorage and hence are completely occupied economically in meeting the demands of other settled peoples – the gypsies, for instance, or, in another manner, the Jews of the Middle Ages. (Weber, 1920/1958: 13)

In *Economy and Society*, Weber elaborated the concept, noting that 'pariah peoples' are distinguished by 'political and social disprivilege and a far-reaching distinctiveness in economic functioning' (1922/1968: 493). In the same text, Weber emphasized the importance of *ritual separation* as a defining characteristic of 'pariah peoples', drawing certain limited analogies between the religious beliefs of low-caste Hindus and Jews (1922/1968: 492–500).

The notion that ritual separation constitutes an integral feature of 'pariah peoples' also appears in another of Weber's works, *The Sociology of Religion*. Here, Weber offers the same definition of a 'pariah people' as in *Economy and Society*: '[i]n our usage, "pariah people" denotes a distinctive hereditary social group lacking autonomous political organization and characterized by prohibitions against commensality and intermarriage originally founded upon magical, tabooistic, and ritual injunctions' (1922/1965: 107–108; 1922/1968: 493).

As recognized by Weber, the ritual segregation of pariah peoples is not necessarily, or exclusively, a function of discrimination by host communities. Ritual segregation can also result from, or be reinforced by, religious or cultural norms instituted or maintained by the minorities themselves (Weber, 1922/1968: 492–500). According to the traditional belief systems of numerous Roma sub-groups, for example, it is the *majority* (including

members of other Roma sub-groups) who constitute a potential source of pollution or shame and the *minority* who embody notions of 'purity' and moral integrity (Fraser, 1992/1995: 244–246; Stewart, 1997: 204–221). By inverting the rigid and oppressive social hierarchy of mainstream, non-Roma society these Roma sub-groups have been able to acquire a measure of pride and self-esteem.

Weber has comparatively little to say about the Roma in his extended discussion of pariah peoples in Europe and Asia in the works cited above. In contrast to his detailed sociological analysis of Judaism and of Jewish diasporic communities (Weber, 1917–1919/1952), Weber's references to the Roma are perfunctory.

Scholarly critiques of Weber's 'pariah peoples' concept have tended to focus on Weber's understanding of Judaism and the historical experience of the Jewish diaspora (Abraham, 1988; Fahey, 1982; Nirenberg, 2003; Shmueli, 1968). With very few exceptions, scholars have either ignored or merely noted Weber's characterization of the Roma as a 'pariah people' (Tesfay, 2009). However, Weber's concept can help us to understand both the wide-ranging problems experienced by Roma minorities in the CEE region since the end of communism, as well as the limited and ambivalent role of law in addressing these issues.

The Loss of Residential Anchorage

In Weber's analysis, Roma, like Jews, are a people living in exile who cannot claim a distinct territory as their own. When Weber developed this thesis, the nexus of land tenure with notions of identity, as well as economic and physical security, remained strong, particularly in the CEE area (Berend, 2003: 21–22, 29–31, 204–215), while the value system of the peasants placed enormous emphasis on the ownership and cultivation of land (Schöpflin, 1993: 26–29).

In these predominantly agrarian societies, Roma who had resisted integration or assimilation identified themselves as members of various sub-groups: *Kalderash*, *Lovari*, *Rumungri*, *Gabori*, etc. Their traditional way of life conformed to Weber's description of 'pariah peoples'. Thus, Roma sub-groups were characterised by a high degree of economic specialization, providing a range of goods or services to non-Roma whether as wood or metal workers, brick makers, basket weavers, horse traders or musicians (Barany, 2002: 88–91). In addition, most Roma, even the comparatively well-integrated elements, were subject to pervasive political and social disprivilege throughout the 19th and early 20th centuries in the CEE area (Barany, 2002: 83–100; Fraser, 1992/1995: 208–237, 247–256). The lack of a 'residential anchorage' created the conditions of economic and physical dependency.

However, the CEE region underwent profound socio-economic, ideological and constitutional changes during the course of the 20th century. In particular, mass production and the introduction of synthetic materials made many traditional Roma crafts obsolete (Barany, 2002: 96–97). In addition, a decline in the economic and social importance of agriculture, the liberalization of freedom of movement and the comparative weakness of post-communist economies transformed the CEE area. Peasant smallholdings, the quintessential 'residential anchorage' a century ago, have ceased to be the foundation of economic security and personal status in the CEE region. Instead, *mobility*, particularly the

willingness to relocate to urban areas, or abroad, has assumed increasing importance. This major attitudinal shift is reflected in patterns of migration from the CEE area to Western Europe since the accession of post-communist states to the EU (Kahanec and Zimmermann, 2009).

Ironically, as the notion of a 'residential anchorage' has lost much of its former economic and social importance, many Roma in the CEE area have become *more* not less sedentary. Mass redundancies, in the early 1990s, impacted disproportionately on the Roma, heightening their socio-economic marginalization and compelling significant numbers to relocate to overcrowded Roma settlements (Pantea, 2009: 28; Pogány, 2004: 1–2). This *involuntary* residential anchorage is both a product and a cause of Roma poverty in the CEE area:

In the settlements concerned, the greater part of the local community or, to be precise, the Roma, is shut out of the labour market and does not possess the necessary skills that would assure them a living. The effect on the next generation of residential isolation and the families' social conditions make the acquisition of education, of marketable skills or of trades impossible; poverty passes down the generations. (Baranyi et al., 2003: 124)

Legal vs Residential Anchorage

As Weber recognized, the absence of a 'residential anchorage', that is Roma statehood or territorial autonomy, has had far-reaching economic and political consequences for 'pariah peoples'. Historically, the lack of land holdings compelled Roma to concentrate on economic activities useful to the indigenous population. At the same time, the absence of a 'residential anchorage', understood as territorial control, left Roma vulnerable to persecution. Like other 'pariah peoples', Roma have been reliant on the goodwill, or at least indifference, of host communities. Finally, the absence of a 'residential anchorage' contributed to the failure of Roma to develop effective forms of 'autonomous political organization'.

In recent years, there have been efforts to invest the Roma with *legal* rather than *residential* anchorage by recognizing them as a 'non-territorial nation'. This strategy is intended to raise the political profile of Roma in international political, diplomatic and legal *fora* and to increase the capacity of Roma to assert claims and to exercise rights on the international plane.

A belief in the right of every people or nation to an independent 'residential anchorage', in exercise of the principle of self-determination, shaped political and legal discourse in the CEE area during much of the 19th and 20th centuries (Berend, 2003: 89–133; Okey, 1982/1986: 75–180). However, ideas of *nationhood* and claims for the recognition of national rights emerged much more slowly and tentatively amongst the Roma than amongst any other group of comparable size (Pogány, 2000: 177–182). This can be explained, at least in part, by the comparative lack of literacy amongst the Roma, especially before World War II; by the absence of a common Roma language or religion; by the dispersion of the Roma over a large geographical territory, rendering them a perpetual minority; by the lack of a sizeable Roma intelligentsia; and by what Angus Fraser has called, 'the fragmented Gypsy order with its emphasis on difference and distinction'

(Fraser, 1992/1995: 9). Even today, the notion of a Roma 'nation' remains, at best, controversial. Although routinely affirmed by Roma activists and politicians (Hancock, 2002), it has little real meaning for most 'ordinary' Roma (Fraser, 1992/1995: 7–9).

Since the 1990s there has been growing support for the idea that the Roma constitute a 'transnational minority' (O'Nions, 2007: 273–276). However, the Fifth World Romani Conference, convened in Prague in July 2000, went further. Abandoning the language of minority rights while simultaneously rejecting any intention of seeking the establishment of a Roma state, delegates declared that the Roma constitute a nation (Acton and Klímová, 2001: 216–217). In effect, the Conference invoked the 'emotive power' of the doctrine of self-determination (Goodwin, 2004).

Historically, nations in the CEE area have viewed recognition of the right of self-determination as a legal or ideological springboard for efforts to achieve statehood (Okey, 1982/1986: 138–163). However, the notion of a *non-territorial* 'Roma Nation' suggests a different politico-legal trajectory, one in which Roma aspire to collective recognition and greater procedural and substantive rights, on the international level, without claiming sovereignty over any portion of territory. Acceptance of this controversial doctrine would invest the Roma with a degree of *legal* if not *territorial* anchorage, giving them rights and capacities on the international plane, as well as a stronger political voice (Goodwin, 2004; Rövid, 2009: 11). However, the notion of a non-territorial nation, or people, has no obvious place in international law, as presently conceived, while its application to Europe's Roma would amount to a deliberate, if benign, fiction.

International law recognizes 'peoples', 'indigenous peoples' and national or ethnic 'minorities' as distinct legal categories with widely different rights (Shaw, 1997/2008: 256–257, 293–301; van Boven, 1995: 470–472). However, there is little, if any, support in international law for the proposition that groups or communities that are widely dispersed across national boundaries and which lack an historic national home may be characterized as a 'people', rather than simply as ethnic minorities in the various countries where they are settled. The nexus of 'peoples' or 'nations' with defined territories, in which they seek to exercise self-determination, is well established (Shaw, 1997).

In addition, as Martin Kovats has persuasively argued, '[t]his imagined community [the Roma] shares no common language . . . culture, religion, identity, history or even ethnicity. Even within countries, Roma minorities are diffuse and diverse and do not function as any kind of actual community' (Kovats, 2003). The absence of even a modest degree of cohesion amongst the Roma of the CEE area, or of an authentic and deep-rooted sense of collective identity, fatally undermines the claim that the Roma are a 'people'. The Roma are 'united', if at all, in a purely *negative* sense, that is, by common concerns such as poverty, socio-economic exclusion and discrimination.

In any event, as Weber would have recognized, the characterization of the Roma as a 'non-territorial nation' is unlikely, of itself, to transform their predicament, whether in terms of chronic unemployment, poverty, educational underperformance, social marginalization or exposure to hate speech and physical assaults. Whatever its potential benefits, legal anchorage cannot substitute for residential anchorage. The latter concept, as understood by Weber, assured settled peoples both a means of subsistence and some degree of physical security. It is far from self-evident that legal anchorage would help Roma minorities, in the CEE area, to achieve either of these objectives.

Political and Social Disprivilege of Roma in the CEE Region

Historical Overview

Since their appearance in the CEE area in the Middle Ages, Roma have faced severe and wide-ranging 'political and social disprivilege' of the kind Weber identified with 'pariah peoples'. Roma have been subject, in turn, to discrimination, persecution, exploitation, forcible assimilation, ethnic cleansing and genocide. In large part, this persecution was expressed in law, whether in measures excluding Roma from particular territories, subjecting them to slavery or prohibiting marriages between Roma and non-Roma (Hancock, 2002: 17–37; Rooker, 2002: 18–24).

For several centuries, the recurrent 'solution' to the Gypsy 'problem' was to make Gypsies *disappear*. This solution was pursued literally in parts of the former Yugoslavia, in the 1990s, where Roma communities were ethnically cleansed (Kenrick, 2001). During World War II, up to 500,000 Roma were killed in Europe and in occupied Soviet territory in a process that many writers have labelled as genocide (Hancock, 2002: 40–50; Kenrick, 2006).

In the post-war era, communist administrations in the CEE area plotted the disappearance of the Roma through assimilation rather than annihilation (Stewart, 2001: 81–84). This objective, which was spelt out in various confidential Party texts (Barany, 2002: 113–121), can also be inferred from other sources. For example, a book of reportage published in Budapest, during the latter years of communist rule, includes the story of the courtship and marriage of a young mixed couple living in a village in eastern Hungary (Tamás and Révész, 1977: 121–138). In several black and white photographs that accompany the text, Ilona, the bride, is shown as pretty, bashful and immaculately groomed. With her glossy dark hair and olive complexion, Ilona is unmistakably Roma, while János, her husband, who has fair hair and pale features, is clearly Hungarian. The caption above one of the photographs notes, with evident approval, 'Ilona was only courted by Hungarian [i.e. non-Roma] boys' (Tamás and Révész, 1977: 135).

Ilona emerges from the book as thoroughly 'modern', whether in her fashionably short dress, in not wearing a headscarf, or in her willingness to be photographed in a series of romantic poses with her husband. Ilona has visibly shed any vestiges of her ancestral Roma culture. Traditionally, Roma are prudish, deploring displays of 'immodesty' that they associate with *Gadje* (Stewart, 1997: 211–213).

In the book, Ilona serves as a metaphor for Hungary's Roma. Her union with János and her adoption of Hungarian codes of dress and behaviour represent the realization of communist hopes for the Roma. In linking arms with her Hungarian husband, Ilona is embracing a socialist-inspired modernity and a life free of the 'distressing' cultural baggage of her Roma ancestors.

The material conditions of Roma improved steadily under state socialism, although the housing or services (e.g. education) provided to Roma was frequently of an inferior quality (Barany, 2002: 117–125; Stewart, 1997: 34–37). However, in most of the CEE area Roma were strongly discouraged from pursuing their traditional occupations and ways of life. Thus, most nomadic Roma were forced to sedentarise, while the great majority of the Roma were directed towards unskilled or semi-skilled work within the regular economy (Stewart, 1997: 97–101; Tamás and Révész, 1977: 202). Until as late

as the mid-1970s (or the late 1980s in the case of Czechoslovakia and Bulgaria), communist policy favoured the *disappearance* of the Roma through assimilation (Barany, 2002: 112–153).

The record of communist administrations' efforts to address the 'political and social disprivilege' of Roma is mixed. On the one hand, communist policies were radically *inclusionary*. They encouraged the integration of Roma within the general population. Communist administrations also sought to improve Roma living conditions, healthcare and levels of literacy. However, the ultimate, if unspoken, object of communist policy was to transform Roma into non-Roma, that is, into workers and model socialist citizens. In denying the legitimacy of Roma identities, other than for purely folkloric purposes, communist administrations are responsible for aggravating the 'political and social disprivilege' of Roma in the CEE area.

Socialist Law and Roma Disprivilege

As indicated above, the political and social disprivilege of Roma has frequently expressed itself in law. For example, socialist law impacted on the Roma by *criminalizing* elements of their traditional culture(s) such as nomadism and entrepreneurialism (Barany, 2002: 119–121). Socialist law disregarded the value systems of Roma sub-groups such as the *Vlach* Roma of Hungary, who consider wage labour alien and undignified (Stewart, 1997: 24–25, 107). Under communism, Roma who repeatedly absented themselves from their place of work, whether in factories, agricultural co-operatives or on building sites, were liable to imprisonment for 'social parasitism' (Barany, 2002: 120). In effect, Roma were labelled as criminals for practising their traditional culture(s).

By contrast, socialist law played only a limited and subordinate role in alleviating the material disprivilege of Roma in the CEE area. The improvement in Roma living standards, and in the access of Roma to regular employment, was largely achieved by political and bureaucratic means rather than through the enforcement of legal norms. Under communism, it was often unnecessary to use law to implement government policies. The pervasiveness of the Party, in the workplace, in the cultural sphere, in public services, in the print and electronic media, etc., meant that policies concerning Roma could often be applied through administrative or other means without the need for legislation.

Socialist law also differed from bourgeois law in so far as it denied citizens, including Roma, effective remedies with which to challenge the legality of government policies or bureaucratic decisions (Markovits, 1982: 516, 611). 'Socialist rights' were 'not entitlements, but individual expressions of the law's general objectives . . . geared to persuade and move a citizen along the road to socialism' (Markovits, 1982: 522).

Political and Social Disprivilege of Roma in the CEE Area Following the Collapse of Communism

Ironically, the 'political and social disprivilege' – which Weber identified as a defining feature of 'pariah peoples' – worsened dramatically for millions of Roma following the

collapse of communism (OSCE, 2000). The dismantling of the authoritarian structures that characterized state socialism resulted in the removal of many of the mechanisms that had helped keep anti-Romaism in check. During the socialist era, the police and security apparatus had served as an effective deterrent to public disorder while the Party's absolute control over the print and electronic media meant that racist invective, whether directed against Roma or other national, ethnic or religious groups, could not be published or broadcast without the authorization of the Party.

Paradoxically, the introduction of cosmopolitan law in the CEE region, with its emphasis on democracy, human rights and cultural pluralism, was accompanied by a surge in racially motivated assaults on Roma, by the routine denigration and stereotyping of Roma in the media and by right-wing politicians, as well as by a wave of redundancies that impacted disproportionately on Roma (OSCE, 2000). Roma became convenient scapegoats for societies experiencing economic pain and ideological dislocation in the transition to democracy and market economies.

The sharp increase in anti-Romaism, recorded in the early 1990s, has not abated. In 2009, Andrzej Mirga, Senior Adviser on Roma and Sinti Issues to the OSCE, warned that the situation facing Roma in the CEE area was continuing to deteriorate: '[w]hat we are witnessing today is the deliberate and organized use of hate speech and incitement of violence against Roma and Sinti in a number of countries' (Mirga, 2009: 6). As Mirga noted, 'political discourse [in the CEE area] has been deteriorating as more populist, racist or extreme views are allowed to circulate without raising an outcry or condemnation by public figures' (Mirga, 2009: 8).

Mirga's conclusions are supported by the findings of inter-governmental human rights bodies, including the European Commission Against Racism and Intolerance (ECRI), and by prominent NGOs. In its latest report on Hungary, for example, published in February 2009, the ECRI noted, 'a disturbing increase in racism and intolerance in public discourse' (ECRI, *Report on Hungary*, 2009: para. 61).

In most other countries in the CEE area, including the Czech Republic, Romania and Slovakia, political developments have followed a similar course. For example, in April 2007, in its concluding observations on the report submitted by the Czech Republic, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed its deep concern at, 'the prevailing negative sentiments and stereotypes concerning the Roma among the Czech population' (CERD, 2007: para. 13). Two years later, in 2009, the European Commission on Racism and Intolerance noted that, 'racist discourse appears to be becoming an increasingly everyday fixture in the Czech political arena' (ECRI, *Report on Czech Republic*, 2009: paras 44, 45).

The disjunction between law and the political and socio-economic experience of Roma in the CEE region is much greater now than when Weber developed his 'pariah peoples' thesis. Historically, Roma in the CEE area, as elsewhere in Europe, were subject to a shifting series of legally sanctioned restrictions on their basic freedoms (Fraser, 1992/1995: 129–189). However, as CEE states have gradually recognized an expanding catalogue of human and minority rights, Roma in the region have experienced *worsening* socio-economic and political marginalization (Mirga, 2009). The 'gap' between law's ringing affirmation of human rights, including non-discrimination, and the reality of most Roma lives in the CEE area has never been wider.

The Constitutional Disprivilege of Roma in the CEE Area

If codes of human and minority rights in the CEE area disguise rather than articulate the political and social disprivilege experienced by millions of Roma in the region, post-communist constitutions are more explicit. The worsening 'political and social disprivilege' of Roma in the CEE area has been mirrored by a striking increase in *constitutional* disprivilege. Several constitutions in the region, adopted since the fall of communist rule, introduce distinctions based solely on ethnicity or culture. In effect, one national group, Slovak, Slovene, Croat, Hungarian etc, is elevated to a pre-eminent position. An emphasis on the *ethnic* foundation of statehood, in the CEE region, can only serve to compound the marginalization of Roma in the collective political imagination, thereby exacerbating their 'political and social disprivilege'.

The schizophrenic character of constitution-making in post-communist Central and Eastern Europe is illustrated by the Slovene Constitution. This provides that: 'Slovenia is a state of all its citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination' (Constitution of Slovenia, Art. 3) It is difficult to see how a state comprising *various* national and ethnic groups can be truly 'of *all* its citizens' if, at the same time, it is 'founded on the permanent and inalienable right' of a *single* nation to self-determination (my emphasis). In effect, this amounts to having one's constitutional cake and eating it.

Similarly, the Croatian constitution affirms that, 'the Republic of Croatia is . . . the national state of the Croatian people', while emphasizing that Croatia is, 'a state of members of other nations and minorities who are its citizens' (Constitution of Croatia, Preamble). There is an inescapable tension between the idea of Croatia as '*the* national state of the Croatian people' and as '*a* state of members of other nations and minorities who are its citizens' (my emphasis).

In January 2012, Hungary's first post-communist constitution entered into force. In common with the constitutions of Croatia, Slovenia and Slovakia, amongst others, the Hungarian text privileges a single national group. Although the preamble stops short of affirming that Hungary is founded on the right of the Hungarian people to self-determination, it promises to preserve the 'nation's intellectual and spiritual unity', 'Hungarian culture' and 'unique language' (Constitution of Hungary, 2012: Preamble). While notions such as 'intellectual and spiritual unity' and 'Hungarian culture' lack clarity, there can be little doubt that they reflect an overriding desire to stamp a *national* character on the plurinational Hungarian state. It is worth recalling that, aside from other national, ethnic and religious minorities in Hungary, there are up to 800,000 Roma, amounting to well over 8 per cent of its population (World Directory of Minorities and Indigenous Peoples: Hungary).

Roma and The Multiple Failures of Post-Communist Law

As well as constitutionalizing ethnic difference, post-communist law in the CEE area has failed the Roma in several other important respects. The adoption of a raft of laws prohibiting, *inter alia*, discrimination in employment and in access to public services, guaranteeing individual and minority rights and criminalizing hate speech has had a

surprisingly limited impact on the massive 'political and social disprivilege' experienced by Roma in the CEE region (Czech Helsinki Committee, 2008; Mirga, 2009; Nicolae, 2009). This was acknowledged, in July 2011, by László Andor, EU Commissioner for Employment, Social Affairs and Inclusion who stated candidly: '[t]he discrimination and social exclusion of Roma is a long-standing and complex problem and their situation is simply getting worse' (*EU Commissioner*, 11 July 2011). This state of affairs is all the more surprising if one takes account of the huge efforts of NGOs and of regional as well as global mechanisms, including the OSCE, the Council of Europe and the EU, to improve the situation of Roma in the CEE area.¹

In April 2011, the EU Commission adopted a 'Framework for National Roma Integration Strategies up to 2020', focusing on the critical areas of access to education, employment, healthcare and housing (*EU Framework for National Roma Integration Strategies, 2011*). The Framework calls on Member States, 'to align their national Roma integration strategies' in accordance with the priorities identified by the Commission and requests them, 'to prepare or revise their national Roma integration strategies and present them to the Commission by the end of December 2011'.

Lack of space prevents a detailed analysis of the engagement of international human rights law – or of regional and international organisations – with the Roma (O'Nions, 2007; Pogány, 2006b; Rooker, 2002). However, reports by international human rights monitoring mechanisms confirm that the situation of Roma in the CEE area shows few signs of improvement. In effect, global and regional human rights institutions, through their detailed monitoring and reporting procedures, have revealed the extent of their own failure. For example, in 2009, in its fourth report on Hungary (ECRI), the European Commission on Racism and Intolerance stated:

Roma continue to face both a disproportionately high rate of unemployment and discrimination in access to employment. In the fields of education and housing, the efforts of the central authorities are frequently hampered by the manner in which local authorities translate the measures taken into practice ... Roma families are deprived of access to social housing by discriminatory rules and practices of local authorities; and Roma children are still confronted with segregation in schools, which has a devastating impact on education outcomes for these children and leaves them with correspondingly limited future life choices and employment prospects. (ECRI, *Report on Hungary*, 2009: 8)

The Report also noted, 'a sharp rise in racism in public discourse' in Hungary, commenting that, 'anti-Roma discourse appears to be becoming increasingly virulent and wide-spread' (ECRI, *Report on Hungary*, 2009: 8). The ECRI has published similarly gloomy assessments of the situation of Roma in other CEE states, including the Czech Republic, Slovakia, Romania and in the post-Yugoslav states (ECRI, *Country Monitoring Work*).

The failure of post-communist law to remedy 'the political and social disprivilege' of Roma can be attributed to various factors. However, in part, it stems from chronic problems in implementing national and international norms. For the most part, worsening Roma disprivilege is not the consequence of a *lack* of law but of difficulties in ensuring that laws, including obligations arising from binding judicial decisions, are translated

into effective policies. The persistent failure of the Czech authorities to implement the judgment of the Grand Chamber of the European Court of Human Rights (ECtHR), in *D.H. and Others v The Czech Republic*, illustrates some of these problems.

In November 2007, the ECtHR ruled that Czech educational policies, which resulted in 50 per cent of Roma children attending special schools for young persons with mental disabilities, were discriminatory. In particular, the Court held that Czech policies violated Article 14 of the European Convention read in conjunction with Article 2 of Protocol 1 (*Case of D.H. and Others v The Czech Republic*, ECHR, 2007: para. 210). The Court emphasized that Czech education policies had helped to perpetuate the social and economic disadvantage of Roma in the Czech Republic by consigning Roma children to a second-class education (*Case of D.H. and Others v The Czech Republic*, ECHR, 2007: para. 207).

Despite the clear and emphatic language used by the Grand Chamber, little progress has been made in implementing this judgment due to political and bureaucratic obstruction in the Czech Republic. In a report issued in March 2011, the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, noted that, since the landmark 2007 judgment, 'there appear to have been hardly any changes on the ground' (Hammarberg, 2011: para. 60). More recently, the European Roma Rights Centre (ERRC) expressed serious concern at newly adopted legislation in the Czech Republic, which 'legalises the status quo; perpetuating the placement of children without disabilities into segregated classes established for children with disabilities' (ERRC, 2011: para. 7). According to the ERRC, 'both disability and socio-economic status can be used as a proxy for race', under the new measures, 'keeping Romani children isolated from their non-Romani peers' (ERRC, 2011: para. 7).

Such difficulties in implementing clear and binding legal commitments would seem to stem, at least in part, from the unwillingness of politicians, bureaucrats and others, whether at the national or local level, to apply laws that conflict with their personal convictions. As Vojtech Cepl, a judge of the Czech Constitutional Court – and a shrewd observer of the CEE transitions – noted, 'rules of human conduct', which may vary from one society to another, are far more likely to dictate patterns of behaviour than 'formalistic declarations about freedoms and democratic principles' (Cepl, 1997: 230).

For the Roma, the disappointments of post-communist law also lie in its emphasis on civil, political and minority rights to the virtual exclusion of the social and economic entitlements that were universally available under communism. By contrast, post-communist law, with its emphasis on civil and political rights and its radical curtailment of social and economic guarantees (Pogány, 2004: 98–100), has left the region's Roma exposed to economic insecurity and deepening poverty (Ringold et al., 2005: 24–54). To paraphrase Anatole France, 'post-communist law, in its majestic equality, forbids *Gadje* as well as Roma to sleep under bridges, to beg in the streets, and to steal bread'.

In effect, the crude anti-Gypsyism of communist and pre-communist law has given way to less transparent but more insidious forms of discrimination and marginalization.

From Distinctiveness in Economic Functioning to Welfare Dependency

Weber identified 'distinctiveness in economic functioning' as one of the defining features of 'pariah peoples'. In Weber's analysis, this distinctiveness arose from the fact that

pariah peoples neither own nor control land, and are therefore compelled to earn a living by providing goods and services to 'settled peoples' (Weber, 1920/1958: 12–13).

For several centuries after their emergence in Europe, a large if steadily diminishing proportion of Roma conformed to this economic model. Roma sub-groups possessed highly specialized skills as musicians, wood and metal workers, brick makers, basket weavers, wood carvers, etc. However, by the inter-war era, mass production and shifting consumer tastes in the CEE area had eroded the demand for many traditional Roma products and services (Barany, 2002: 96–98). Increasingly, Roma were obliged to hire themselves out as day labourers.

As we have seen, communist administrations transformed the socio-economic conditions of the mass of Roma, integrating them within the general workforce and giving them access to improved housing and public services. However, in retrospect, it is also clear that communist policies eroded the capacity of Roma to adapt to new challenges. By discouraging and, in some cases, criminalizing Roma entrepreneurialism and economic independence, as well as by creating welfare systems that provided an unprecedented degree of economic security for Roma, communist administrations suppressed Roma adaptive skills, encouraging a culture of dependency that is still much in evidence (Pogány, 2006a: 337–341). In addition, by *proletarianizing* the Roma, that is, by directing working-age Roma towards mostly unskilled or semi-skilled jobs in state-owned enterprises or in agricultural co-operatives (Barany, 2002: 137–140), communist authorities were at least partially responsible for the fact that Roma generally lacked the formal qualifications necessary to find regular employment in the economic environment that emerged in the 1990s. Across the CEE area, the need for unskilled labour contracted massively.

As a result of communist-era policies, of the steep escalation of anti-Romaism in the CEE region since 1990, of the concentration of Roma in areas of high unemployment, and of continuing Roma under-achievement in education (Ringold et al., 2005: 41–48), Roma in the CEE area now face enormous difficulties in finding regular work. A village near Hungary's border with Croatia, Alsósztémárton, illustrates some of these problems.

Residents of Alsósztémárton, almost all of whom are ethnic Roma, enjoyed a period of comparative prosperity in the 1970s and 1980s. They found steady, well-paid work in factories in nearby towns (*Népszabadság*, 13 September 2010). However, the closure of loss-making state-owned enterprises, in the early 1990s, left most of the adults in the village out of work. Lacking the education or skills to find alternative employment, 95 per cent of the village's working age population now subsist on benefits (*Népszabadság*, 13 September 2010). 'We live on what the state gives us', a 52-year-old man, unemployed for the past 20 years, told a reporter from the Hungarian daily, *Népszabadság*. Alsósztémárton is not an isolated phenomenon. Problems of unemployment, inadequate skills and education, pervasive discrimination and welfare dependency overshadow the lives of most working-age Roma across the CEE region.

If Roma in the CEE area continue to possess a distinctive economic profile, the nature of that profile has changed drastically. Weber associated the Roma with *economic specialization*, with the practice of certain traditional crafts that assured them a modest income and an accepted if subordinate and peripheral place within European societies.

By contrast, Roma in the CEE area no longer have an acknowledged economic niche. At the same time, as a result of discrimination and inadequate education, Roma face enormous difficulties in obtaining regular work. Roma 'distinctiveness in economic functioning' now consists of welfare dependency and poverty.

From Ritual to De Facto Separation

As indicated above, Weber argued that pariah peoples are characterized by ritual separation from mainstream society. Examples of ritual separation, identified by Weber, include, 'prohibitions against commensality and intermarriage originally founded upon magical, tabooistic, and ritual injunctions' (1922/1968: 493).

Anthropological studies confirm that notions of ritual separation from mainstream society continue to inform the practices of traditional Roma sub-groups, serving as a means of reinforcing group identity (Fraser, 1992/1995: 244–246; Okely, 1983: 206–212). However, these practices have virtually disappeared from the lives of most Roma in the CEE region (Barany, 2002: 13; Pogány, 2004: 33–34). As emphasized above, 'most East European Gypsies no longer live by the old customs; they are not, as it were, "orthodox Roma"' (Barany, 2002: 13).

Since 1990, the de facto separation of Roma from non-Roma has grown massively in the CEE region, reversing previous processes of integration (Mirga, 2009; OSCE, 2000). If, in earlier periods, Roma maintained ritual separation from *Gadje* as a means of preserving group identity, through the observance of practices concerned with 'purity' or 'shame', *Gadje* in the CEE region now isolate themselves from Roma because of widely held assumptions about Roma 'criminality', 'disorderliness' and 'disease'.

The de facto separation of Roma from non-Roma, which is evident across much of the CEE region, is sharply at odds with the modernist rhetoric of law. Global and regional human rights law and the domestic law of the CEE states emphasize principles of equal treatment, non-discrimination and freedom from racial harassment, whether in the education of Roma children (see e.g. *Case of D.H. and Others v The Czech Republic*, ECHR, 2007; *Case of Oršuš and Others v Croatia*, ECHR, 2010), or in the treatment of Roma and other minorities by the police (see e.g. *Case of Stoica v Romania*, ECHR, 2008; *Case of Vasil Sashov Petrov v Bulgaria*, 2010). However, the growing de facto separation of Roma from non-Roma is indicative of a massive increase of anti-Romaism in the CEE area. It is far from clear whether, over time, universalist principles of human rights and social inclusion – which frequently conflict with entrenched local values and beliefs – will bridge the de facto separation of Roma from non-Roma in the CEE region, or alleviate worsening problems of Roma marginalization. It remains to be seen whether the EU Commission's 'Framework for National Roma Integration Strategies' will be any more successful than previous initiatives intended to improve the situation of Roma in the CEE area.

Conclusions

Weber's 'pariah peoples' concept was developed nearly a century ago. However, it is of much more than merely historical interest. Despite massive changes in the economic,

social and political landscape of the CEE area, Weber's thesis remains remarkably 'modern'. Weber's 'pariah peoples' concept can help us to identify and make sense of the chronic and wide-ranging problems experienced by Roma in the region.

Surprisingly, perhaps, the transformation of the CEE area since the early 1900s has failed to narrow the gulf between Roma and non-Roma. Today, as at the turn of the 20th century, the Roma lack a 'residential anchorage', while the bulk of Roma in the CEE area, remain victims of pervasive 'political and social disprivilege'.

In some respects, as suggested above, the problems of the Roma have become significantly worse than in Weber's lifetime. The end of the communist order, with its emphasis on socialist internationalism and class-based solidarity, marked the beginning of a reversion to the *ethnification* of politics. The integrative thrust of socialist Roma policies was thrown sharply into reverse as new constitutions in the region labelled the Roma as a marginal element within reconstituted nation states. At the level of civil society, anti-Roma sentiment in the CEE area is more intense now than in either the socialist or inter-war periods (Barany, 2002: 98; Mirga, 2009).

As suggested above, the de facto separation of Roma from non-Roma has largely replaced the *ritual* separation identified by Weber. While the latter was often maintained and enforced by 'pariah peoples' themselves, whether for cultural or religious reasons, the former is a product of heightened levels of anti-Romaism in the CEE area (Mirga, 2009).

Today the bulk of Roma in the CEE region are either no longer economically active or have been consigned to a precarious and marginal economic existence. In effect, Roma 'distinctiveness in economic functioning', of the kind understood by Weber, has been replaced by a state of involuntary economic dependency. This is unsustainable, whether economically, socially or politically (Ringold et al., 2005: 4–5).

As well as offering an analytical framework with which to identify the elements of Roma marginality in the CEE area, Weber's 'pariah peoples' concept can also help us to make sense of the multiple failures of law to overcome Roma marginalization. The cosmopolitan thrust of post-communist law, especially its emphasis on non-discrimination, equal rights and minority protection, is largely a projection of 'public' European values as enshrined in OSCE, Council of Europe and EU instruments. However, as suggested above, these norms do not correspond with the actual 'rules of human conduct' in CEE states. In the main, these rules, which are deeply embedded within the social and political fabric of most CEE societies, treat Roma as *responsible* for their 'political and social disprivilege', including their de facto separation from host communities (Vásárhelyi, 2009).

Law, particularly in new democracies, is unlikely to succeed as a transformative agent when it runs counter to deeply entrenched social beliefs. As Vojtech Cepl noted, a decade and a half ago, these 'rules of human conduct':

... are what is foremost in peoples' minds ... These informal rules are the norms of conduct and shared values that actually operate in everyday life to effect patterns of behavior in society. Formalistic declarations about freedoms and democratic principles that are ignored in practice never enter into this realm. (Cepl, 1997: 230)

According to Cepl, the 'rules of human conduct' can only change slowly as 'norms develop and are internalized gradually in an evolutionary fashion' (Cepl, 1997: 230). It would be rash to assume that, over time, the rules of human conduct with respect to Roma in the CEE states will mirror the precepts of cosmopolitan law. For the foreseeable future, Weber's 'pariah peoples' thesis is likely to remain disturbingly accurate as a description of the lives of millions of Roma in the CEE region.

Notes

I am immensely grateful to Robert Fine, David Campbell, and to the anonymous referees for their helpful comments on an earlier draft of this article. Responsibility for any remaining omissions or deficiencies is mine alone. All translations from Hungarian, unless indicated to the contrary, are mine.

1. For a detailed analysis of efforts by the OSCE, the Council of Europe and the EU to assist Europe's Roma see respectively: <http://www.osce.org/odhr/44247>; http://www.coe.int/t/dg3/romatravellers/default_en.asp; http://ec.europa.eu/justice/discrimination/roma/index_en.htm

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