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Using courts to build states: The competing spaces of citizenship in transitional justice programmes

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ABSTRACT

This paper examines how establishing a new legal institution shapes understandings and practices of citizenship. It does so through a study of the creation of the Court of Bosnia and Herzegovina (CBiH) between 2002 and 2014 and, in particular, its emerging jurisdiction over war crimes trials since 2006. International sponsors of this institution herald the establishment of the Court as an important step toward achieving justice for the crimes committed during the 1992–1995 conflict in Bosnia and Herzegovina (BiH). But alongside its legal function, intervening agencies have emphasised an allied objective to use the Court to consolidate state structures and foster a civic sense of Bosnian citizenship. Using qualitative data, this paper argues that the creation of the CBiH illuminates a series of divergent understandings of citizenship. In particular, while the court seeks to convey a concept of liberal democratic citizenship, this is only achieved through the enrolment of civil society actors operating across BiH territory. Rather than heralding a series of 'grassroots' alternatives to official scripts, these social agents see the value of a universal understanding of justice structured around equality and rights, but often failed to see this expressed in the activities of the Court. The paper concludes by reflecting on the relationship between law and citizenship, where the imagined sense of universal jurisdiction is undermined by social concerns relating to the barriers that prevent access to justice.

Introduction

On the 6th June 2002 the then High Representative of Bosnia and Herzegovina (BiH), Lord Paddy Ashdown, attended the inaugural session of the Court of Bosnia and Herzegovina (CBiH) and addressed the assembled local and international dignitaries. Reflecting his responsibility for implementing the 1995 General Framework Agreement for Peace (GFAP) and the legislative powers of the Office of the High Representative, Ashdown had recently imposed the creation of the CBiH in the face of domestic political opposition. In doing so, the legal territory of BiH was unified for the first time since the end of the 1992–5 conflict, establishing a jurisdiction 'above' that of the two sub-state entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). Ashdown described the impacts of a unified court in terms of fostering liberal democratic citizenship:

> [The court] is about protecting the people of this country, protecting their rights and protecting their status as free citizens in a functioning democracy. This court enshrines a simple truth – that everyone is equal before the law. Justice is the foundation on which every society is built. Everything else we want to do here, from jobs to refugee returns to establishing a democratic system, depends on the rule of law (OHR, 2002).

Just over ten years later in a conference room in central Sarajevo, on September 20th 2012, a workshop took place to discuss the findings from research exploring the implementation of the CBiH. In front of assembled Court Officials, members of international organisations, human rights non-governmental organisations (NGOs) and academics, Bakira, the president of a prominent association of women victims of war, explained the difficulties that members of her association faced pursuing justice through the CBiH. Challenging the sense of universal liberal democratic citizenship envisaged a decade earlier, Bakira shook with anger and held pictures of prominent alleged war criminals from the Visegrad area of eastern BiH (Fig. 1):

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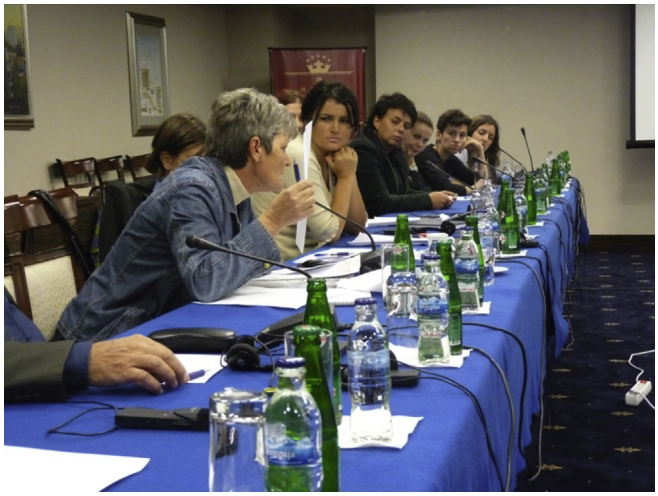

Fig. 1. President of the association of women victims of war, September 20th 2012, Sarajevo. Photograph: authors' own.

> Since I was a victim and witness at The Hague Tribunal and Court of BiH, I have heard it all and I was aware of it. I feel sorry to say that victims are fed up with all sorts of projects, all kinds of conclusions and reports and nothing has been completed by now […]. Twenty one years have passed since the war started. Victims are dying every day and they will not live long enough to see justice (Sarajevo Workshop, September 20th 2012)

We start with these two moments in the creation and operation of a state-level court to point to some of the fundamental tensions within understandings of the geographies of citizenship. As much of the scholarship in this field has pointed out, citizenship itself is a contested term, one that orientates attention to both forms of political collectivity and individual political practices (Desforges, Jones, & Woods, 2005; Staeheli, 2011). Starting from this distinction between the collective and the individual we can begin to trace a series of tensions: between citizenship as a form of governmental technique that seeks to order and classify a population and as a set of individual behaviours that seek to intervene and shape the nature of communities and practices of rule (Staeheli, Ehrkamp, Leitner, & Nagel, 2012). Perhaps where this distinction between a governmentally-inscribed form of citizenship and a set of political practices is most starkly reflected is in the conceptual separation between liberal democratic citizenship and civic republican citizenship (Kofman, 1995). Where liberal democratic citizenship emphasises the constitution of certain universal rights that derive from membership of a political community (usually a state), civic republican citizenship emphasises the duties of the individual in serving and constituting such a political community. Therefore in Ashdown's framework, the establishment of the Court consolidates liberal democratic citizenship in BiH, a territory partitioned down ethnic-lines after the GFAP (see Campbell, 1998; Toal & Dahlman, 2011). Capturing the celebratory spirit of early works on the expansion of liberal democratic citizenship (see Marshall, 1950); the court was imagined by Ashdown to play a significant part in unifying the state and cultivating a sense of the universal rights and duties that comprised BiH citizenship.

In contrast to Ashdown's expectation of universalism, Bakira's response a decade later speaks of the uneven nature of access to the legal process. In Bakira's view the lack of legal support, the exclusion of women from decision-making bodies and the absence of victim's voice from the judicial process were all playing a role in marginalising individuals on the basis of wealth, gender or geographical location (Sarajevo Workshop, September 20th 2012). In doing so, this statement echoes the work of critical scholars who have pointed to the multiple scales of exclusion and marginalisation that are often masked by the purported universalism liberal democratic citizenship (see Hubbard, 2013; Ong, 2007; Valentine & Skelton, 2007). For example, Painter and Philo (1995) argue that it is through the demarcation of 'insiders' and 'outsiders' that liberal citizenship asserts its right to rule (see also Isin, 2002; Isin & Turner, 2007). One of the key messages of this work has been that forms of exclusion take many forms, from the securitisation of borders and tightening of immigration controls (Leitner & Strunk, 2014; Sparke, 2006), to socially and culturally inscribed mechanisms of exclusion based on gender (Goldring, 2001), class (Pykett, 2009), sexuality (Binnie & Valentine, 1999; Hubbard, 2013), age (Jeffrey, 2010), disability (Valentine & Skelton, 2007), race (Kofman, 1995) or intersections of these lines of identity (Preston, Kobayashi, & Man, 2006). The co-presence of so many strands of potential exclusion has led scholars to rely upon a distinction between *de jure and de facto* citizenship to highlight the distinction between the conferment of citizenship rights and the possibility of practicing or accessing such rights (see, for example, Valentine & Skelton, 2007).

But we must be careful to avoid drawing the straightforward conclusion that this work illuminates a neat distinction between inclusion and exclusion in the operation of citizenship. Qualitative studies of the everyday mechanisms and actions through which citizenship is asserted have pointed to the complex and plural nature of claims to membership of political community, where the dividing lines between legality and illegality, the formal and the informal, or the citizens and outsider are often indistinct and more commonly disputed (Holston, 2008; McFarlane, 2012; Roy, 2005). Consequently, much of the scholarship critiquing a liberal democratic understanding of citizenship has done so in order to highlight the alternative citizenship practices that may be being masked by focussing solely on the allocation of formal political rights. In this sense Bakira's statement must be coupled with her position within a civil society organisation mobilising to enact change: her association is actively demanding its legal rights and setting about to voice concerns. This form of *active* citizenship can be interpreted in two ways. In the first it reflects a move towards a model of civil republican citizenship, rejecting the atomised individualism of the liberal democratic model and emphasising a sense of collective politics required to lay claims to rights (Lister, 1997: 32). This expectation of civic collective action has been a feature of international intervention in developmental and post-conflict environments (Mohan, 2002), and not least in BiH (Belloni, 2001). As a second interpretation Bakira's actions could be understood as a form of *activist* citizenship, a more radical form of insurgent practice that seeks to transform the existing political system and enact new forms of rights (Holston, 2008; Isin, 2009; Leitner & Strunk, 2014). Such actions may not be directed solely against the state, but instead confront the multiple scales – from the city to international organisations – from which perceived injustices stem (Miraftab & Wills, 2005; Ong, 2007; Painter, 2002, 2008).

This paper draws on this literature to trace the tensions between international expectations of liberal democratic citizenship and the forms of political and legal action that surround state building processes. By tracing the relationship between forms of governmental intervention, and in particular the establishment of a new legal institution, we are keen to pursue in empirical detail the notion of citizenship as a "dynamic concept in which process and outcome stand in a dialectical relationship to each other" (Lister, 1997: 35). Rather than reifying a straightforward geometry between state-sanctioned notions of liberal democratic citizenship

and the more activist practices found within civil society; the evidence from the establishment of the court suggests individuals are using informal spaces and practices to seek to access rights that they believe to be the responsibility of the state. Partly articulated through a nostalgia for Socialist modernity and partly through a weariness of a dysfunctional post-conflict state, these claims for state-based rights view war crimes trials as necessary for achieving justice but insufficient to strengthen the capacity of the state.

This focus on process and outcome of citizenship is conducted through a study of the use of law to consolidate the state. By exploring the forms of international intervention in BiH since 2002 the paper argues that there is a central tension between the function of law (to arbitrate on crime) and the desire to consolidate the state (to reconcile different stories of the past and visions of the future). In order to make this argument, we will draw on qualitative data gathered over twelve months of residential fieldwork in BiH conducted between July 2011 and August 2012. The research design was informed by studies of citizenship that have sought to study both the contexts and practices through which concepts of citizenship are articulated and challenged (see, for example, McNamara & Morse, 2004; Mohan, 2002). This approach gleaned information about both concerning elite discourse and what Desforges et al (2005: 448) term "actual existing citizenship". The research involved over sixty interviews with court officials, members of human rights NGOs, members of international organisations, embassy officials and representatives within Bosnian victims' associations. We also conducted participant observation of outreach programmes led by the CBiH, the International Criminal Tribunal for the former Yugoslavia (ICTY), Swiss organisation Track Impunity Always (TRIAL) and Medica Zenica. Finally, the research involved monitoring war crimes trials at the CBiH, following (where possible) trials from indictment through to verdict. In this paper we will use this material to examine the establishment of the Court of Bosnia and Herzegovina (CBiH), focussing on the mechanisms used by court officials and international agencies to build the legitimacy of these new legal orders and institutions.[1]

Like many institutions in the post-conflict period in BiH a specific start date for the Court cannot be discerned, it rather faded into existence through a series of new laws and initiatives. Most notably in 2002 the Office of the High Representative (OHR) imposed a Law on the Court of Bosnia and Herzegovina, and a year later imposed a new Criminal Procedure Code in 2003 based on US-common law. These moves aimed to transform prosecution and trial processes, in particular eliminating the need for an investigative judge, and introducing adversarial trial arrangements and plea bargaining (see OSCE, 2004). The commencement of trials at the Court required the training (or re-training) of the domestic judiciary and the establishment of the State Investigation and Prosecution Agency (Državna agencija za istrage i zaštitu or SIPA). The creation of the Court served a dual function: first, it was tasked with consolidating a legal system that, since the GFAP, had been highly fragmented. As has been well documented (Campbell, 1998, 1999; Toal & Dahlman, 2011), the GFAP retained the borders of the BiH state but devolved substantial powers to the two substate political 'entities' the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina, and later to a special district around the northern town of Brčko. In the absence of a state court, trials were conducted at the entity level or below using the 1976 Criminal Code of the former Socialist Federal Republic of Yugoslavia. The second objective of the Court was to serve as part of the completion mandate for the International Criminal Tribunal for the former Yugoslavia (ICTY). Since 1993, war crimes cases had been held at the ICTY (161 by 2014) at The Hague under the mandate provided by United Nations Security Council Resolution 808. International officials viewed the CBiH as an institution that could initially handle transferred cases from the ICTY while simultaneously employing its own investigative and prosecutorial competences in order to indict and try those suspected of war crimes in BiH.

The dual function of the CBiH is reflected in aspects of its structure. The Court's trial activities are divided into three sections: war crimes cases, organised crime and other criminal cases in BiH that are not covered by municipal courts. Between 2005 and 2011 thirteen war crimes cases were transferred from the ICTY to the CBiH, while over fifty further war crimes trials were being heard by the Court (TRIAL, 2014). Located in a refurbished Yugoslav People's Army (Jugoslovenska narodna armija or JNA) barracks on Kraljice Jelene street, the Court building was completed in 2006 using funds from the European Community and the Government of Japan, with bilateral donations paying for the refurbishment of individual courtrooms. Since its creation it has been a 'hybrid' court, drawing its judiciary from both domestic and international sources. The enrolment of international judges has become a focal point for critique by domestic politicians keen to portray this legal enterprise as anti-democratic and internationally imposed.

The establishment of the CBiH therefore provides a valuable insight into the creation of a new state-level institution in a country that has been highly devolved in the post-GFAP period. The CBiH illustrates the paradoxes of internationally-sponsored state building, in particular using externally-conferred powers to strengthen the internal sovereignty of a post-conflict state (see Elden, 2009). Consequently the establishment of the Court has required a range of initiatives aimed at communicating its legitimacy to a wider Bosnian public. Collectively referred to as 'public outreach', these processes have enrolled civil society organisations as partners in conveying the aims and activities of the CBiH across BiH territory. Tracing the nature and outcomes of these activities provides an opportunity to explore these more "prosaic" (Painter, 2006) and "improvised" (Jeffrey, 2013) mechanisms through which legal legitimacy is conveyed. While the notion of establishing legal jurisdiction is suggestive of an abstract and instrumental process, studying the establishment of the Court allows an exploration of how performances of law unfold in actual places and are carried into existence by individual bodies (Massey, 2004: 6). Legal places are as mutable and dynamic as any other and the establishment of jurisdiction requires the constant production of particular subjectivities and geographical imaginaries. We are not arguing here simply of the complexity of varied contrasting imaginations of law and state that circulate in post-conflict BiH. Rather, we are suggesting that attempts to establish liberal democratic citizenship rights through the creation of the CBiH are productive of alternative understandings of justice and differing interpretations of responsibilities of the state. This line of critical legal geography begins to challenge the singularity of jurisdiction, illuminating instead the uneven nature of individual submissions to new legal orders and the creation of alternative legal geographies that bolster particular claims to state sovereignty.

The paper is divided into the following four sections. In the first we examine the primacy given to law and legality within international interventions in both developmental and post-conflict settings. The increased use of law has a distinctly uneven spatiality, where it is often justified through global or universal assertions of humanitarian law, though territorialised within states and directed towards fostering liberal democratic citizenship. The second section focuses on the experience of BiH and examines how the CBiH attempted to convey its legitimacy following its creation in 2002, a process that involved constituting a Bosnian public as a site of intervention. The imagined qualities of such a public shaped the practices of outreach performed by the Court. The distance between these expectations and their realisation through the public

outreach process is examined in the third section. This discussion points to the competing spaces of citizenship enacted through public outreach, as alternative ideas of the locus of justice are mobilised alongside support for the BiH state. The paper concludes by reflecting on the geographies of law, where the imagined sense of universal jurisdiction is undermined by social concerns regarding the barriers that prevent access to justice.

Law as intervention

International military intervention in state sovereignty produces a set of complex citizenship effects. Scholars from a range of disciplines have traced how foreign policy elites, in particular – though not exclusively – in North America and Western Europe, have justified military and developmental interventions on the basis of protecting rights through the notion of humanitarianism (Fassin, 2012; Weizman, 2012). The 1999 NATO intervention in Kosovo has become an archetype of such discursive framing (Chomsky, 1999), though similar humanitarian refrains have been articulated in the recent interventions in Afghanistan, Iraq and Libya (Elden, 2009; Gregory, 2004, 2011). Rooted institutionally in the United Nations' 1995 initiative *Responsibility to Protect*, these actions base their legitimacy on the need to intervene where states are failing to protect the humanitarian needs of their citizenry. While these actions have received considerable scholarly scrutiny, in particular by political geographers (Dahlman and Ó Tuathail, 2005; Dodds, 2001), there is an allied set of legal manoeuvres that have only recently begun to garner geographical attention. Perhaps the central schism of intervention relates to the spatiality of legal decision-making, where claims to legality and illegality are flexibly appropriated and/or projected in line with particular political causes. At once, certain performances of the state are emboldened and reinforced while other state practices or state-like territories are declared illegal (see Jeffrey, 2009; McConnell, 2009).

The institutionalisation of transitional justice has consistently exhibited a tension between the desires of state building and the transnational impulses of humanitarian law. Reviewing twentieth century legal innovations, advocates suggest the tribunals following World War II in Germany and Japan introduced a sense of accountability into armed conflict, grand claims that were suggestive of an emergent global jurisdiction (Goldstone, 2000). This seemingly universal objective was further strengthened by the subsequent agreement of the fourth Geneva Convention (1949) relating to the humanitarian treatment of civilians during war. Of course, critics both at the time and since have argued that the application of such purportedly universal legal norms was partial, noting in particular that Allied aerial bombardments of both Germany and Japan were not classified as war crimes (Grayling, 2006). These examples illustrate a number of tensions between the state and imagined universalism, enabling victors to claim legal supremacy through the application of humanitarian law while also establishing a new narrative of German statehood as responsibility was projected on a narrow section of the political and military elite.

As scholars across criminology, socio-legal studies and geography have noted, such tensions between particularist state interests and universal humanitarian law have been exacerbated in recent years (Fassin, 2012; McEvoy, 2007). The emergence of new institutions of transitional justice in the early 1990s reflected a desire amongst United Nations Security Council members to end impunity for crimes committed during war. The first institutional responses to this objective were the International Criminal Tribunal for the Former Yugoslavia (ICTY) (established in 1993 by UN Security Council Resolution 827) and the International Criminal Tribunal for Rwanda (ICTR) (established in 1994 through UN Security Council Resolution 955). Both initially located in The Hague, these institutions focused on high-ranking officials in the genocides and violence that had occurred in the remains of Yugoslavia (1992–1999) and Rwanda (1994). This model of transitional justice severed the pursuit of justice from the geographical contexts within which the crimes took place and appears to circumscribe state sovereignty in the name of a more universal conception of rights and responsibilities.

But alongside these institutional practices can be traced a wider deployment of legal language, practices and justifications for relationships both between and within states. Oomen (2005: 890) has defined this shift as the "judicialization of international relations" recognising "an increased emphasis on the law (in particular human rights) and legal institutions in nations' dealing with one another." Thus international humanitarian law is not simply the legal backdrop that legitimises military action; law has become a focal point for subsequent attempts to consolidate states and foster economic development (see Morrissey, 2011, 2014). Over the past two decades we can trace a general reformulation of international development objectives towards the promotion of the rule of law, through assistance to human rights NGOs, writing laws and building courts (Mokhiber, 2000; Oomen, 2005). For example, the United Nations Development Programme (UNDP) has developed a global set of programmes entitled *Access to Justice and the Rule of Law*, arguing that these two poles can "spur economic growth and help to create a safe and secure environment for recovery in the aftermath of conflict or disaster" (UNDP, 2013). Confirming this significance, UNDP's January 2013 policy brief seeks to integrate rule of law into the post-2015 Development Framework, successor to the Millennium Development Goals. Where policies of 'good governance' have long emphasised the significance of democratic institutions to notions of progress, these approaches specifically connect intervention with the legal configuration of rights and responsibilities. Perhaps one of the most explicit consequences of this shift is the expansion of programmes of transitional justice beyond post-conflict settings to becoming a blanket term relating to the protection of rights in circumstances of changing political authority (see United Nations Security Council, 2004).

An examination of the creation of a new state court therefore sits at the interface of socio-legal studies and political geography. Critical legal scholars are keen to disrupt a sense of international humanitarian law as a disembodied set of ideals, exploring instead its implementation within actual existing sites, from court rooms to human bodies (see, for example, Hyde, 1997; Latour, 2010; Jeffrey & Jakala, 2014). Advocating more situated and embodied accounts, scholars have investigated the role of individual comportment, assertions of masculinity and the body as a site of violence (and consequently a repository of evidence) within the practice of law (Clarkson, 2014; Felman, 2002; Mulcahy, 2010). This re-materialised sense of legal practice intersects with critical and feminist political geography that has sought to examine the plural positions of those producing – and subject to – forms of legal or political intervention (Blomley, 2008; Kuus, 2013; Staeheli & Nagel, 2013). The spatial imaginaries of legal intervention suggest the cultivation of global forms of solidarity nested within the spatiality of the state, where, in contrast, the lived experience of state-building is replete with contradictory forms of solidarity and belonging, including intersecting ethnic, urban, familial or state-based identities. Therefore a study of social responses to the establishment of the CBiH provides a critique of the classical geopolitical image of intervention as necessarily strengthening forms of state citizenship, and instead highlights the plural forms of citizenship practice that co-exist in these moments of political transformation.

Constituting the public

The first step in creating a public communication strategy from a legal, political or scientific entity is to discern the characteristics of the 'public' (Barry, 2013). There is a primary distancing involved in this process, whereby the institution is rendered as a specialist communicating outwards to the public (Lambourne, 2012). While this reproduces a rather transactional understanding of public outreach, the form and purpose of this communication reveals much about the Court's understanding of the characteristics of the BiH public. Attempts to establish a programme of public outreach at the CBiH exhibit the tripartite challenges of creating a new state-level legal institution in a partitioned post-conflict environment: conveying legitimacy across a fragmented political landscape, translating new legal processes into an intelligible format for those under its jurisdiction and using human rights NGOs as mediating associations. In these terms outreach concerns three interventions: projecting universal law across BiH territory, communicating rights and fostering civil society.

The first challenge, that of communicating law across a politically fragmented territory, is a necessity in a political environment where the CBiH is viewed with suspicion. In particular, political elites see the creation of a Court at the state level undermining the authority of the Republika Srpska and the FBiH. The partitioning of state competences between the two entities has provided the context for the emergence of 'ethnocratic' rule at the local level, where ethnically-aligned political actors dominate local government and corporate life. This entwining of ethnic identity, economic primacy and territorial control has proved extremely durable over the twenty years since the end of the conflict (Toal & Dahlman, 2011). Neither attempts to renegotiate the constitution nor conditionality related to European Union accession have produced significant alterations to GFAP territoriality. It is in this context of solidified ethnocratic rule that political elites, particularly in the RS, have sought to present the Court as an ethnically-aligned and/or neo-colonial enterprise. Milorad Dodik, the President of Republika Srpska, has repeatedly attempted to connect the operation of the Court with an ethno-national bias on the part of intervening authorities, stating, for example, that "[i]t is unacceptable for the RS that Muslim judges try us and throw out [our] complaints that are legally founded […] we see the conspiracy that has been created" (B92, 2008).

In this respect public outreach is an adversarial practice, seeking to challenge existing discourses of justice that emphasise division in post-conflict BiH. These characteristics of outreach were emphasised in the 2011 Medium Term Institutional Development Plan for the Court of the Prosecutor's Office of BiH:

> Public perceptions of the work of [the court and prosecutor's office] is distorted by misunderstandings of their fundamental role and by political rhetorical attacks on the institutions [...] efforts should be made to encourage the delivery of public information through the media with the assistance of donors (CBiH, 2011).

But over the course of the interviews with donors and international elites, interpretations of outreach extended beyond countering divisive discourses of BiH citizenship. In addition, individuals were keen to present the Court as an institution through which a cohesive vision of BiH may be communicated:

> [The Court is] an important institution for Bosnia and Herzegovina, we want to support it as much as we can. It is important we send the message that state institutions function, and particularly state institutions that are supporting the rule of law [...] I would say that the future of this country depends on a functioning state court (interview with European Ambassador, 29th November 2011, Sarajevo).

The second interpretation of the necessity for public outreach did not relate directly to the spatial cohesion of BiH, but rather to the need to communicate the form and characteristics of Court processes, both in terms of the adoption of US-common law and the increased role of the Court in war crimes trials. As Almira, a member of a legal advocacy NGO in the northern town of Bijeljina, remarked:

> This is a new institute, a new legal institute for the Bosnian society. We need to have it explained, victims need to have it explained [...] what kind of facts are established, and how we are using the facts? This is something we do not understand each other very well [...] and they think that their job has been done by the sentence [...] It's not. It's definitely not. It's just the start of the work within the process of confronting what happened to us, and this constantly here and this is now something we are not saying publicly (interview, 10th May 2012, Bijeljina)

Here, the novelty of legal proceedings is related to the need to extend forms of communication beyond law, using the legal process as a means through which individual and collective rights may be publicly discussed. In doing so the NGO representative is extending the remit of outreach, arguing that the prosecution of law creates the moral responsibility to open public dialogue concerning justice.

This approach to the need to create new communicative strategies reflects broader concerns over the weakness of media activities in BiH, cited by interview respondents as a consequence of the commercialisation of media outlets and a legacy of Socialist Yugoslavia. In terms of commercialisation, Zoran, who works as a journalist in a news agency in Sarajevo suggested that "[...] the effect of the commercialization of the new radio stations and the development of new media has actually led to the decrease in the quality of journalism. So it's really a disaster if a trial starts in front of the Balkan judiciary and the public has no insight" (interview, 20th March 2012, Sarajevo). This comment seems to reflect Taylor and Kent's (2000) finding that the abrupt end of state-controlled media has led to a plethora of politically-funded news outlets without a strong commitment to investigative or independent journalism. In terms of the past, interview respondents viewed the reticence of legal officials to undertake outreach activities as a reflection of a Socialist legacy, where the 'freedom of the press' remained within the confines and limits of the Party, leaving no space for subversion of the system (Baltic, 2007). Consequently, the notion of judicial representatives engaging with the media (and, ultimately, the public) carried the supposed risk of corrupting the legal system. This latter interpretation calls to mind the imagined purity of law as separated from the "messy realities of local particularities" (Blomley, 2008: 161).

The imagined purity of law is also a feature of the third challenge of creating a process of public outreach. Citing a concern that Courts are perceived to be aloof and unapproachable (CBiH public outreach official, 8th October 2009), from their outset in 2006 public outreach programmes conducted by the CBiH have worked through civil society organisations. Reflecting the normative placement of civil society as key agents in democratising post-conflict states (Belloni, 2001; Fagan, 2005), human rights NGOs and, to a lesser extent, victims' associations have been at the centre of mechanisms used by the Court to communicate with the BiH

public. In 2006 the Court established a 'Court Support Network' (CSN) in order to create an infrastructure through which Court activities and objectives could be conveyed to the BiH public. The CSN was formed of four NGOs and a victims' association located across BiH: the Sarajevo-based Žene ženama, Mostar-based Centri Civilnih Inicijativa (CCI), Prijedor-based victim association Udruženje Prijedorčanki Izvor (IZVOR), Tuzla-based Forum Građana Tuzle, and Bijeljina-based Helsinki Komitet. These NGOs and victims' association were selected by the CBiH based on their experience with issues of human rights and reconciliation within BiH. The idea was for organisations to become hubs within their communities and draw upon both their local networks and knowledge to weave an intricate system of exchange between networks, hubs and Court. Provisional funding was provided for the members for the first six months allowing for each member to hire two members of staff to the activities of the CSN (Jeffrey, 2011). The activities undertaken included a hotline to the Court which members of the public could phone and ask questions concerning the work of the CBiH, a programme of Court visits aimed at bringing victims to the Court, the formation of connections with local media, and a series of events in which Court representatives spoke with communities affected by atrocities. After the initial six months of funding a letter was provided to each CSN member by the CBiH to be used to find alternative funding to continue CSN activities.

The conclusion of the CSN as a formal infrastructure connected to the Court has not limited the activities of the NGOs that were involved, or reduced the level of cooperation between these organisations. For example Izvor in Prijedor continues to seek out funding to continue activities which directly link the victim community in Prijedor and surrounding areas with the Court. They continue to provide an information hotline for victims to ask questions regarding the war crimes process, they provide transportation for witnesses to and from the local courts as well as to the CBiH and also provide transportation for victims and families to the reading of verdicts at the CBiH, and have also organised self-help groups for members. In 2012, they launched a campaign to commemorate the genocide which took place in the Prijedor region in 1992. This campaign included an international book launch commemorating missing persons from the region as well as memorials at Omarska and Keraterm and the launch of the global Stop Genocide Denial Campaign. Another former CSN member organisation, Helsinki Komitet, has continued to develop outreach initiatives which have included a series of television debates, human rights summer schools for youth from across the former Yugoslavia as well as developing a transitional justice course for university students in BiH. In addition, over the course of the research period a series of Public Dialogues on Sexual Violence took place in locations across BiH, hosted by the women's organisation Medica Zenica, the Swiss organisation Track Impunity Always (TRIAL), the ICTY Outreach Programme in BiH and the BiH Office of UN Women.

The practice of public outreach has therefore sought to constitute a BiH public into which interventions may be made while undertaking activities designed to foster understanding of, and engagement with, the work of the CBiH. These practices have made a series of assumptions concerning the spatiality, competences and associative life of BiH and, consequently, have constructed practices of outreach that seek to provide correctives through civil society organisations. The following section examines how these interpretations of public outreach were received, adopted or challenged by those targeted by its activity. From early in the research period it became clear that these responses do not seek to foment an alternative imaginary of citizenship than that articulated within processes of outreach. Instead, organisations and individuals lamented the widening gap between the expectations of legal processes and the activities of the Court. There was a recurrent sense of the failure of the state to secure the rights that were not only imagined by NGO members to derive from state but were also part of the claims made for the establishment of the CBiH.

Spaces of citizenship

While communicating universal legal rights across BiH territory was a key motivation for the establishment of the CBiH, the operation of public outreach activities pointed to a more complex spatiality. For some of those involved the selection of a dispersed set of associations within the CSN reified the localised geography of the post-conflict state, where organisations could build significant local networks in isolation from wider public outreach activities. For example Sanela, the Director of an NGO working with victims of sexual violence in the central Bosnian town of Zenica, used a public forum on the nature of legal support for survivors of wartime rape to discuss the creation of a legal support network in their town. She articulated a key problem of accountability that stemmed from this localised practice of outreach:

> Seventeen representatives have signed up for this network [in Zenica] and we have many details to speak about, steps, problems, difficulties we are facing as working group, and in fact the biggest problem in the beginning was that everybody wanted to transfer their responsibilities and jurisdictions to somebody else and not to undertake it with his institutions (submission to Tuzla public dialogue, 19th April 2012).

The sense of competing or alternative jurisdictions is key, and not merely reflective of the competing layers of judicial responsibility in contemporary BiH. The existence of the OHR's executive and legislative powers over the state since 1997 have normalised a sense that competing sovereignties coexist in any given BiH locality. Toal and Dahlman (2011) document in detail the interplay between international agencies and local officials in municipalities across BiH, where the transfer of responsibility for decision making was a common tactic amongst political elites when faced with unpopular choices. In the case of the Zenica NGO the existence of other scales of legal practice pose a challenge, both in terms of the state-level CBiH but also within European judicial institutions, such as the European Court of Human Rights (ECHR). This latter jurisdiction is open to both victims of war crimes seeking compensation but also, as in the 2008 case Maktouf and Damjanović vs. Bosnia and Herzegovina (see ECHR, 2008), for convicted war criminals to query the legitimacy of their trial.[2]

Others involved in the network saw the decentred nature of the outreach process as a virtue, a means through which durable coalitions may be forged. This position recalls critical scholarship that has focused on local spaces as site through which individuals may become "subjects rather than objects" of citizenship (Lister, 1997: 32). This was particularly significant in BiH, where the plurality of different levels of accountability rendered the local more significant as a tangible space of support and collective action. These accounts emphasised the desirability of avoiding formal government institutions and, instead, prioritising the initiative and capacities of individuals involved. For example, Dragomir, a member of a Sarajevo-based international missing persons NGO, rejected the claim that localisation was undermining state-based practices:

> […] you have to have personal will and local will, you know, to start something which, in so many other communities in Bosnia, has not been the case, and I think the example in Prijedor shows you how, even with the lack of some state level political will, you can, as I call it, localise transitional justice in your own area if possible (interview, 28th October 2011, Sarajevo).

This focus on self-provisioning reproduces a sense of the active or insurgent transitional citizen, seeking to produce networks of support and justice outwith the formal legal process (see Jones, Jeffrey, & Jakala, 2013). Reflecting the wider expectations for civil society within public outreach processes, this comment suggests that the existence and vibrancy of associative life can compensate for failings within formal political or legal institutions.

While the virtues of localised practices were lauded by some, a far larger number of organisations and individuals lamented the devolving of responsibility for witness support – and in particular psychosocial care – to human rights NGOs. In this optic, civil society had neither the appropriate skills nor sufficient funding to meet the needs of individuals coming into contact with the transitional justice process. The reliance on a small number of NGOs had the consequence of very uneven forms of support across BiH, in particular in situations where displaced persons had returned to areas where they were an ethnic minority. One member of a NGO in the north western Bosnian town of Ključ stated at a public outreach event in Prijedor that he was concerned about the uneven nature of support for victims across BiH:

> We do not have a universal approach to all the victims. Our witnesses and our victims are always being distinguished territorially, nationally and politically and even religiously. What is missing is universality to the approach, I do not know why; maybe because non-governmental organizations often imitate political elites […] not all of them but some of them. The problem of victims of rape, wartime victims and witnesses of war crimes is too deep for the non-governmental sector to deal with it exclusively (Submission to public dialogue, 23rd May 2012, Prijedor).

What is striking in this excerpt is the invocation of the concept of the 'universal'. It illustrates a commonly-held belief amongst respondents that the problem was not the absence of tailored support, but rather the lack of a commonly-experienced access to legal information, the prosecutor's office or details of trial processes and outcomes. NGOs regularly referred to the BiH state as "weak" or "abnormal", since it was perceived to be unable to adequately cope with the volume of war crimes cases or the social obligations that stemmed from these legal activities. Such sentiments are a product of international claims concerning the capabilities of the Court, often coupled with nostalgia for the legal regime with Yugoslavia. Civil society organisations did not consider themselves as a suitable replacement, largely because these organisations themselves often projected particular ethno-national interests (for a discussion of such of the politics of victims associations in BiH see Delpla, 2007). In these terms, the informality of civil society as harbingers of legal information was itself a problem in constituting a sense of a coherent BiH state. When a representative from the Mostar CSN organisation exclaimed that she shouldn't be doing this job, "it is the job of the Ministry of Justice" (interview, October 12th 2009), she was inferring that it was not the provisioning of the individual but the responsibilities of the state that were emphasised by civil society respondents. As an interesting consequence of this perception of the absentee state, one legal advocacy NGO was concerned about taking a case to the ECHR since this projected a sense of the weakness of BiH to manage its own legal affairs, exclaiming that she "did not want give the idea that the state could not organise reparations for victims of war" (interview, 4th November 2011).

If the practice of public outreach highlighted a nested set of local and state-level spaces of citizenship action, it also illustrated the challenge of using public outreach to contribute to understandings of citizenship rights. The key issue here related to the legalistic nature of the transitional justice process in BiH: legal practices and the attitudes of jurists had been prioritised over alternative forms of restorative or reconciliatory justice (see Jeffrey, 2011; McEvoy, 2007; Oomen, 2005). Dragomir, a representative from an international missing persons NGO, viewed this as a form of legal isolation: "it's almost like their legal function takes place in some kind of vacuum, it doesn't happen within a broader society, where there are people with, you know, wants, needs, emotions" (interview, 28th October, Sarajevo). The prioritisation of legalism is encapsulated by the prominence given to transparency within the outreach process, where the possibility of viewing the legal process or accessing legal documentation is understood by Court officials as the optimal expression of public engagement. But as Dragomir suggests, this disembodies the outreach process as each viewer is assumed to be able to assume a similar vantage point. Consequently, the imaginary of transparency underplays the forms of constructed invisibility, where the public is unable to either access or comprehend legal processes and decisions. For Gordana, a member of a Sarajevo-based human rights NGO, the emphasis on legal specialism shaped the possibility of communication with the public:

> [t]he Court keeps the ideology that only a person with educational background in a legal field can be managing this job [of public outreach]. That is a cardinal mistake because legal staff do not know how to communicate legal decisions with the local community and that is where the problem of communication has been created which, again, is not a financial or ethical issue but something that could be resolved through dialogue (submission to Sarajevo workshop, 20th September 2012).

Gordana's account betrays an alternative communicative strategy, not centred around transparency but rather on dialogue. This sense of the uni-directional nature of outreach processes was amplified when the demographic of those targeted by the outreach process was also considered. Gordana's colleague, Vesna, was animated in her frustration with a process that assumed certain competences and facilities were available to those seeking information concerning legal processes:

> We are not realizing at all what the target group of the people we are referring to is and in which way we have to communicate with our target group, which is primarily victims. And if you are not able to explain to the victim what the adjudication is, what is the decision of the Court what is the point in sending that announcement? [...] I cannot tell to my grandmother to go on Internet and download the adjudication if she is interested in it (submission to Sarajevo workshop, 20th September 2012).

Through these accounts of transparency and transactional forms of communication we return to the issue of universalism. While civil society organisations lamented the absence of universal access to support and legal advice, they simultaneously critiqued an approach that treated victims and witnesses as disembodied, without "wants, needs, emotions", and lacking standard access to channels of communication. This challenges a virtuous imaginary of law as a technical practice that somehow operates outside particularistic politics. Such an image of technocratic intervention is familiar to those who have studied the past twenty years of internationally-led state building practices in BiH, stalked as they have been by a desire to emphasise the moral equivalency between ethnic groups, as if this marks the route to reconciliation (see Simms, 2002). In similar terms the enrolment of civil society is based on their positioning as intermediaries between the Court and

the public, an abstract form of social placement that both denies the variations in actual existing organisations and also underplays the role of such organisations as dissenting voices from the GFAP state.

The central tension, then, is between a legalistic understanding of citizenship that is structured around the visibility of law, and the lived experience of partial support, slow trial processes and the absence of information. Within this argument are a complex set of normative positions at work relating to the appropriate spatial framework for citizenship, reflecting what Staeheli (2011: 5) has referred to as the "co-presence of forces that reinforce states and challenge them." The critique of state level law by civil society agencies was not made, in the main, in an attempt to cultivate 'localised' alternatives. Instead, they undertook practices that emphasised the embodied and situated nature of the justice process, but wished to see greater centralisation of legal services and universal forms of support. Here, then, we see the difference between the localisation of responsibility, as has characterised the public outreach process, and the embedding of a universal form of provision that is attentive to differentiated sites, spaces and bodies.

Conclusion

> Bosnia is an absolute leader when it comes to statistics in war crimes processing. But, what does it mean for an individual victim? What do these statistics mean for a person who was raped and held for, let's say, five months, as a sex slave, for instance, or another person who just can't find his or her father, who just disappeared and they just found one bone, you know, and they can't find anything else, and this person still thinks where are the, you know, the other parts of the body, and so on. So what do these statistics mean after all? They don't mean a thing, you know, and that's what's bothering me, this, yeah, between the institutional approach and this individual perspective, and these two are so far away from each other (interview with Dragomir, member of missing persons NGO, 28th October 2011, Sarajevo).

This paper has examined the plural spaces of citizenship imagined and enacted within a transitional justice programme, where a court is used to assist in the consolidation of a post-conflict state. In the wake of failed constitutional negotiations to revise the BiH constitution and the increasing solidification of the GFAP internal boundaries, the CBiH has been lauded as a means through which a liberal democratic citizenship could be fostered at a state level. At the same time, international elites have presented the 'localisation' of war crimes trials as part of the completion mandate of the ICTY, while also emphasising the opportunity to democratise the war crimes process, to foster participation and spread understanding of the crimes of the past. As exhibited in the comment from Dragomir above, it is this entwining of legal and political objectives that has raised expectations concerning the potential impacts of the Court. In one interview a respondent from a Tuzla-based community group described this as the difference between "court justice" and "historic justice" (interview, 24th April 2012). In the absence of more reconciliatory or restorative forms of justice, the use of trial processes has been viewed as insufficient for victims and witnesses, many of whom have yet to see culprits brought to justice. Even where trials have occurred, victims lamented the ability for perpetrators to claim innocence, even when a guilty verdict has been made (and in some cases for sentenced individuals to take their trial to review within the ECHR, see ECHR, 2008).

Thus the key tension exhibited in the qualitative data related to the relationship between legal mechanisms and the constitution of liberal democratic citizenship. In justifying the establishment of the court as a step towards state consolidation, intervening agencies were reflecting a common post-Cold War policy prescription of viewing states as the containers through which human rights obligations are legally guaranteed (Taylor, 1994). In this sense the state remains a privileged imagined scale within international responses, where the language of aspatial humanitarianism is materialised within state territoriality. This observation contributes to critical scholarship that has argued that such statism reproduces classical geopolitical scripts emphasising the territorialisation of responsibility, as state-building seeks to place a boundary around the deviance of state failure, terrorism or conflict (Elden, 2009; Gregory, 2004; Jeffrey, 2009). But perhaps more explicitly, it assumes a clear line between the projection of universal jurisdiction over territory and the consequent creation of rights-based citizenship amongst the BiH population.

The first challenge to this rather technocratic understanding of the constitution of citizenship came through the necessity for public outreach schemes. Such practices are expanding across legal instruments that understand the legitimacy of their authority is an accomplishment rather than a pre-given condition (see, for example, ECHR, 2013). These processes cast light on the irony of claims of the separation of legal rationality from wider social contexts (see McEvoy, 2007), recognising instead that the achievement of law requires the consent and participation of non-legal actors (not least in terms of providing testimony and coming forward with allegations of criminal acts). This latter point is particularly pertinent within war crimes trials where the evidential base rests heavily on witness testimony in the absence of documentary or material evidence.

There is a paradox, then, between the desire to 'localise' war crimes trials through the construction of a state court and the necessity of public outreach processes designed to cultivate participation and engagement with the Court. While one views 'the local' as the BiH state (in contrast to the ICTY's operation at a transnational scale) the other localises through the creation of a network of civil society organisations. These observations could be taken as a straightforward endorsement of recent studies in political geography of the multi-scalar nature of contemporary citizenship, where claims to rights are performed through diverse affiliations that deviate from state territoriality (Hubbard, 2013; Valentine & Skelton, 2007). But the attitudes of those involved in this process suggest a sense of unease about the use of this scalar rhetoric as a reflection of a more virtuous or emancipatory form of politics. In particular, respondents exhibited nostalgia for a form of modernity where the state played a key role in provisioning rights, even when they were themselves members of NGOs and civil society organisations that were involved in encouraging participation in the Court's activities. For the majority of respondents discourses of 'the local' were themselves destabilising of potential state provision of legal services and institutions. Hence the requirement to enact multi-scale citizenship was a struggle against absence, rather than a reflection of new opportunities to enact rights 'above' or 'below' the state.

In making this argument we are not dismissing civil society in BiH or elsewhere as a significant site for the securing of rights. Rather we are pointing to the need to understand civil society as a diverse, situated and embodied set of actors that are neither an extension of – nor straightforwardly in antagonism with – the state. This was neither a story of acquiescence or insurgency, but instead involved forms of strategic action and mobilisation that sought to draw on different spatial scales to embolden the work of their organisation. This observation supports the need to engage in actual existing practices of law and citizenship in their plurality, often pursuing seemingly divergent political agendas. This argument orientates attention to the ways individuals and associations

interpret and challenge the constructions of law. This sense of the exasperated audience permeates accounts of the 2014 popular protests across BiH. Where BiH citizens have taken to the streets to demand more effective and equal forms of state government, their manifestation has been through the creation of citizen councils, or *plenums*, at the local level (Štiks & Horvat, 2014). Underlining one of the key findings in this research, these mobilisations point to the hybridity of spaces of citizenship, where the 'local' is not claimed exclusively as a site for local transformation but as a means through which to stabilise and strengthen the state.

Conflict of interest

The author declares that there is no conflict of interest.

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Endnotes

[1] In this paper we have used pseudonyms for research participants with the exception of respondents who have given permission for their names to be used.
[2] In this case the two applicants brought a case to the ECHR, on account of the CBiH convicting and sentencing them under the 2003 Criminal Code of Bosnia and Herzegovina. They complained that "the failure of the State Court to apply the 1976 Criminal Code of the former Socialist Federal Republic of Yugoslavia ("the former SFRY"), which had been applicable at the time of the commission of the war crimes, had amounted to a violation of the rule of non-retroactivity of punishments" (ECHR, 2008). In July 2013 the ECHR found in the complainants favour, arguing that the retroactive use of the 2003 Criminal Code of Bosnia and Herzegovina violated their rights since they would expect a more lenient sentence if the 1976 Criminal Code of the former SFRY had been used.

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