The consequences of judicial obligations as a politics of transition in post-war Serbia, Bosnia and Herzegovina, and Croatia

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This paper explores the idea of victimhood from the individual to societal level within the context of transitional justice and reconciliation. The idea of justice and truth has gained considerable prevalence within post-war states in the Balkan region. The reform of the state has required the regeneration of society based on particular legal interpretations of the political violence. As a result, an era of judicial obligations has come to frame how society regenerates, reforms and rehabilitates. Therefore the paper discusses the consequences of wartime victimization in terms of local responses to how ‘the past is processed’ through Transitional Justice institutions like the International Criminal Tribunal of Yugoslavia (ICTY), and associated ad-hoc mechanisms, like outreach programs. The establishment of such judicial processes have set off particular questions like can society be seen as victim? How is society victim? Using a socio-political approach, such questions are problematised through a political defeat paradigm to reveal a particular political anxiety that underwrites the new societies and their politics. This is where the idea of “state anxiety” and “political defeat” are used to discuss what has locally formed out of such politics of transition.

Keywords: victims, transformation, NGOs, transitional justice, reconciliation.

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Introduction

Field debates regarding legal recognition, state reform, and reconciliation in the post-war Balkan context often touched on questions like who is victim? Are WE (as citizens) victim, and how? In the transitional justice (TJ) context, the predominant understanding of who is victim has initially been written by the ICTY court (Orentlicher, 2010; Banjeglav, 2011). Since such legal conceptualisations of victims and their experience as criminal event, the social and political practices of local societies reposition this notion as they respond to the extensive changes and obligations to come from an era of dense reform and rehabilitation.

Judicial obligations like hand over’s, prosecutions, and investigating crimes that become knotted in with European Union (EU) membership candidacy or other vital ‘reform projects’ (Peskin, Boduszynski, 2011: 55) have produced particular consequences and politics on the ground (Subotić, 2009: 362, 365). This is where certain social priorities involve increasing civic participation of formerly marginalised through accounting for the nature of the war.

In response, this paper suggests the importance of taking a closer look at the post-war social and political transformations undergone in Serbia, Croatia, and Bosnia and Herzegovina, be traced through the work of local NGOs. For it is the local NGOs whose informal mandate in the TJ context is to concentrate on social issues like victims, missing persons, human rights, and democracy building. These issues have come to define local NGO projects, initiatives, and state practices. They also frame new government dealership of local and international obligations, amidst the establishment of international transitional justice mechanisms that legally and structurally address the political violence of the 1990s conflicts. As such, these facets of activity require investigation simultaneously. The relationships between them serve as crucial factors to understanding what has shaped the people and the politics on the ground – a politics of transformation.

Therefore, I briefly offer an account of what has emerged on the ground based on retrospective empirical work conducted since 2004 and ongoing. Fieldwork has included semi-ethnographic punctuated field visits, ranging from 2 months to 6 months stints at a time, respectively over the course of seven years. Free form discussions were chosen rather than strict interviews; and in some instances a short questionnaire specific to sampled NGOs was issued, which aided follow up correspondence. Other forms of empirical data
collation included continued field engagement with local practitioners who work in the non-profit sector, different government agencies, and temporary desks established by EU and UN programs, from each state. Research also included long term monitoring of NGOs and state policy ‘behaviours,’ in order to distinguish what are the forces behind programs. Specifically, findings are informed by a sample of local NGOs from each state specifically engaged with Reconciliation programs or projects.

The punctuated revisit approach allowed for an extended exploration of the regional transition. The ‘revisit’ to the field regularly over the past seven years was carried out with a view to understand historical change and continuity, or rather the consequences of the mass political violence and mass transformation (Burawoy, 2003: 669). To discuss the socio-political consequences of victimization, I draw on the initiatives of six local organisations from each state non-comparatively, who have engaged with Reconciliation programs or projects, or linked to this strand of the reform field: Otpor (Serbia), Viktimolosko drustvo Srbija (Serbia), Civic Committee for Human Right GOJLP (Croatia), Documenta (Croatia), Urban Movement Mostar (Bosnia and Herzegovina), Udruzenje Prijedorcankilzvor (Bosnia and Herzegovina).

By concentrating on the aforementioned local organisations we are able to see what has formed rather than measure the impact of the ICTY on local scene. Measuring the impact has proved problematic for many studies in this field attempting to establish direct causal links between the prosecutions and the people (La Rosa, 2006; McMahon, Forsythe, 2008; Meernik, 2005). I therefore choose to explore the work of local organisations due to their role in such reform and rehabilitation as repositories of the social and political transformation. As noted by Jonathan Hearn, local organisations become the voice of the people in so far as identifying wrongs, and challenging the state. Hearn stresses the importance with considering “civil society as part of what links the state to society… and as providing the channels through which peoples influence their state, and states cultivate legitimacy” (Hearn, 2001: 340).

The programs and projects of local NGOs offer representation of the internal social concerns. NGOs focus on the aforementioned issues and attempt to advocate for their address as particular social-political problems, which ultimately denote the local feelings of defeat. Thereby when the NGOs produce projects in address of such issues they project the anxieties of the people, but also turn them into political anxieties for the new governments to
process and manage. It challenges the government, who develop responsive politics as riposte to these feelings.

Society as victim – conceptual construct

The paper will discuss two particular consequences of victimization by focusing on the impact and role of the ICTY in local feelings of victimhood, which pits society as victim. In the past twenty years, much scholarly mite has gone into aptly determining international legal notion of victim and 'war crime.' Though this paper does not offer a genealogy of this, it does recognition the innovation that has emerged with the conceptual realm of how victims and victimhood is discussed. I go on to claim that the ICTY become a significant influence with framing an international legal interpretation of victims regarding the 1990s Yugoslav wars. Though individual experiences informed the understandings, social ramifications of the war crimes were implicitly absorbed into the judicial perspectives. This has produced an uneasy theoretical terrain for discussing collective victimization as mass victimization, and who comprises such category, along side associated questions of who does not and whether those that do not, slip into the perpetrator category, or perhaps even a collective of socially complicit citizens in the arena of transitional justice (Subotić, 2011). These questions are furthermore investigated at the broader level of state responsibility, where ideas regarding victims are lightly explored on the societal level as victims are locally considered in terms of comprising ‘groups’ or ‘associations.’

In this vain, Gibney and Roxstrom explore the idea of victimhood at the state level, where they suggest that the impact of international tribunals tends to establish a ‘victimized state.’ This would pertain to the state having achieved an official stance on reconciliation, and how to understand the past. For Gibney and Roxstrom, victims should call upon their state to pressure those that

2 Due to the magnitude of individual victims, and the handling of victims in the international tribunals (such as ICTY, ICTR, ICC) as quantifying a crime numerically, I claim that the social determination of victims is in terms of individual victims being associated or linked with victim organizations or action groups where often victims are considered in ‘collective’ terms. For more on this see Vanessa Pupavac who argues this is the ‘pathologising of victims’ through collectivizing them stems from ‘Therapeutic governance’ (Pupavac, 2004a; 2004b). In agreement with Pupavac, I perceive this top-down judicial idea of victim as a form of social management and containment of suffering individuals in the new state. This paper will not further develop this but notes and acknowledges the continued need for further research in this area, noting that it rests predominately within agency discourse.
produced their victim identity for an apology, rather than allow for the state with the identified perpetrators to construct a political apology (Gibney, Roxstrom, 2001: 935). To a certain extent, this suggests that the victims are contained in one state and in some instances the new state as a whole is victim. I rather suggest that it is society who is victim and feels victim as their relationship to the state is in a stage of rehabilitation and reform, and is still frayed by the unaddressed legacies of the past, such as the personal loss sustained and the consequences of broader political loss where the state in terms of political leadership failed. Though problematic, the victimized state frame (Gibney, Roxstrom, 2001) is useful for conceptually exploring victims on a broader level such as society as victim instead of state. This is namely due to the contextual nature of the Yugoslav federation where structural and social fragmentation produced and packaged societies into new sovereignties. This occurred through the introduction of an international agenda dedicated to rehabilitating and reforming the new sovereignties into separate democratic states. A large part of the agenda concentrated on the area of justice where international neoliberal ideas of justice were worked into local feeling of justice.

The first is local justice obligations and victim recognition by the new governments. This has seen the emergence of local legal advocacy groups through the need for information gathering and investigating of ICTY cases, which required engaging with local activists and professionals to get to the victims and the facts (Popović, 2008: 115). In turn, this contributed to the gradual growth of rights consciousness with local impetus for victim visibility within international judicial avenues like the ICTY. This then gave rise to local organizations attempting to engage with legal advocacy for victims. Most commonly, local NGOs have emerged as the predominate mediums

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3 For further statist debate on state’s and apology see Gibney, Roxstrom, 2001.
4 I refer to the ‘feeling of justice’ in terms of how international justice was socially experienced. This does is to go beyond ‘measuring’ the impacts of the ICTY as I have found that there is ‘disconnect’ between local links to the ICTY. As found in many socio-legal studies focusing on the ICTY and the reactions of society, such as La Rosa, Subotić, etc. This is further seen through the numerous ‘outreach programs’ established to by the UN, as well as NGOs who have developed programs for assisting witness with support, and victims seeking recognition in such courts. This paper will look at one of many NGOs (later in the paper) working to bridge the gaps between victims and the international judicial engine that the ICTY has become.
5 “Court support network project: IZVOR” – Izvor (The Source) currently involved in developing a network for witnesses but also to develop a court support network throughout the whole region. For more see: http://www.norveska.ba/ARKIV/Ongoing_Projects/IZVOR/
for articulating wartime victimhood in and out of their societies (Popović, 2008: 137). In a contracting climate, they attempt to channel citizen feelings of victimhood as part of their role in the TJ context. Therefore, the paper uses examples of legally orientated local NGOs, to focus on their role with contributing to state pressure through politically framed campaigns, as well as justice to truth seeking initiatives.

The second is connected to state international obligations. The impact of the ICTY establishes ‘justice’ though local group advocacy. This is where the era of ICTY has lead to the development of a social practice of neo-liberal justice and compliance. The implications are that the state functions in a ‘responsive mode,’ causing a type of local political pressure to emerge out of legal reform where meeting obligations is the norm and the state governs with anxiety (Hage, 1996). For Jelena Subotić, such pressured induction of state compliance is a politics of international justice compliance where the state fears prosecution and domestic backlash. In response, the state develops particular strategies to manage such ‘pressures.’ Subotić claims that societal responsibility is absent in ‘the disconnect’ between prosecutions as state compliance. This is through how new governments manage accountability and responsibility at the society level – which involves ‘shielding of the state’ from the societal perpetrator tag. Gibney and Roxstrom also suggest the state is the incubator of social complicity when suggesting that victims should pressure their ‘state’ as the ‘victimized state’ to get an apology from the ‘aggressor state (Gibney, Roxstrom, 2001).’

These works demonstrate how the new states are drawn into the politics of compliance and local obligations, which are determined by societal and judicial imaginaries of victims, responsibility, and accountability. Particular imaginaries are negotiated in this TJ environment. In social terms, responsibility and loss become more than just judicial obligation. It requires socially addressing layers of defeat beyond legal narrative of crime, and more towards the social imaginaries of the self and the lost self as victims of defeat, where resentment and grievance become foreboding forces of challenge rather than change. For instance, part of managing defeat involves dealing with social and political constrains in the form of social resentment and international policies connected to EU candidacy. Robert Meister suggests there to be a need for harnessing grievance where it is suppressed or lives as resentment. The task of the state is to manage the ambivalence and fractured
consensus where loss, suffering, and responsibility is not digestible (Meister, 2002) and produces society as victims.

The consequences of society as victim are predominately feelings of ‘being victims,’ which require the new state to manage those feelings as layers of defeat. I propose that the local effect of ‘meeting’ such local and international obligation has produced a politics of defeat. Defeat becomes something multilayered at the societal level, where local responses and tensions define the intra-state frictions expressed by citizens. The state is left with having to manage these feelings by reproducing new imaginaries.

a) Political defeat: Personal loss vs. broader loss

Drawing from Ghassan Hage’s work on management of political chauvinism, which he claims is a nationalist chauvinism, parallels are found with post-war Balkan context in terms of how social tension impacts state and societal imaginaries. Through his study of Lebanon, Hage suggests ruptured communities struggle to deal with multilayered consequences of the past, producing a defeat identity. Social tensions are connected to nationalist animosity for the new agenda. Hage found that this shapes the new politics. Thereby the socially indigestible defeat identity needs to be managed and regenerated in terms of producing new community imaginaries:

“...the wave of ethnic and national chauvinism in ex-communist Europe from which emerge the contours of a much needed theory of the nature of the affective structure that underlies communal(1) imagining” (Hage, 1996).

This helps explore the social experience of political regimes that sustain ‘political defeat’ of a previous regime, which in Hage’s study dealt with the problem of nationalistic chauvinism in Lebanon and communal relations, and consensus for the new order. To manage social experience of politically defeat, the state took efforts with shifting social feelings of defeat and loss that steam from the failed past regime. Hage suggests that when the new state is created – aspects of the old world imaginaries are left unaddressed causing social disharmonies and perpetuating social feelings of defeat in terms of a lost world and agendas (such as personal loss vs. broader loss):
“The killing of Muslims because they were Muslims, especially because of the brutal manner in which it was done, was an anxiety driven politics aimed at reconstituting social reality so that the other remains a Muslim despite all and the Maronites’ fantasy structure was reproduced…” (Hage, 1996: 7)

Therefore, Hage’s defeat concept for how new states manage nationalist chauvinism is expanded in this paper so as to introduce a political defeat paradigm as an approach to understanding how society is victim, and shaped by individual anxieties, arising from personal loss, and state anxiety that emanates from broader loss:

“It can be argued that part and parcel of the structure is a constant anxiety – driven ideological work required to assure its reproduction across changing social and historical conditions. (Hage: 1996).”

Unlike Hage, I claim the political defeat is associated to societal feeling of being victim when defeated by the past and future systems. Society feels a constrained sense of contribution or control of that future as they are caught up in a politics of compliance of application. I argue that the dynamic socio-political tensions, to emerge from within TJ climate of change, can be understood through a political defeat paradigm. I use this paradigm to identify four types of ‘political defeat,’ to explore society as victim in the context of post war TJ. I propose that with the political defeat paradigm there is a social politics to 1) feeling defeated by leaders; 2) defeated political agenda; 3) feeling accountable; 4) feeling and understanding responsibility, which I group into a ‘political defeat paradigm.’

**Layers of feeling a victim (sense of defeat)**

*Feeling defeated by leaders*

The first sense of defeat, *feeling defeated by leaders,* refers to people who are victims of nationalist politics and the loss of socialist norms. This is where consensus went to the previous nationalist regime. Typically, before the outbreak of the 1990s armed conflict, opposition to the nationalist leadership and the political systems they instated was expressed through civil protest in
public squares. This is where we find early signs of resistance and the onset of anti-war sentiments among the general public in what is now known as Serbia, Bosnia and Herzegovina, and Croatia. Particular movements, and intellectual circles worked to campaign against corruption in the public sector, education, as well as other avenues used by the nationalist governments to mobilise propaganda.\(^6\) “In a semi-authoritarian regime such as Milošević’s during the 1990s, there were pockets of independent media that reported on the vile nature of the Serbian nationalist project and the level of atrocity committed.” (Subotić, 2011: 165)

After the war, and the establishment of the ICTY, the space for anti-nationalist politics gradually opened in so far as challenging right-wing political leaders (Peskin, Boduszynski, 2011: 59). The prosecution of particular atrocities committed under the Milošević regime offered non-conforming local group a minor opportunity to resist the continuance of such political agenda. Local groups attempted to engage aspects of the population who did not support such regimes, and felt defeated by such leaders who carried out violent politics in their name. Uncomfortable with the stigmas, aspects of society were mobilised to call for the end of such leadership.

For instance, in Serbia, the controversial youth movement Otpor, entered the political scene in 2000.\(^7\) Their main objective was to produce campaigns, playing on the idea of the need to purify and remove. Efforts were made to prove that Serbian society not be cast as the supporters of the atrocity and the bestiality of the previous system.\(^8\)

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\(^6\) I refer to the March 1990 protest in Belgrade’s Republican square, which was the first from of social protest since WWII. I also refer to movements like ARC in Croatia who recently celebrated their 20year anniversary for the fight against nationalist politics and the war. Then in Bosnia Herzegovina, I make mention of Krug 99, which was an informal circle of intellectuals who secretly meet in underground radio station and went on the write an anti-war and anti-nationalist statute, which was absorbed into reconciliation campaigns. Its members have become well known NVO leaders and civil society actors, continuing their informal allegiance to the anti-nationalist and war sentiments.

\(^7\) Since the 2000 Bulldozer revolution that removed Milošević from power, the group has changed its function and is today involved with training activists around the world. For more see http://www.cafebabel.co.uk/article/37103/egypt-revolution-serbia-otpor-pora-canvas-youth.html

\(^8\) Julie Mertus conducted a ‘public perceptions survey’ in parts of Serbia (Novi Sad and Belgrade), and Bosnia and Herzegovina (Sarajevo and Banja Luka). She found that most of the responses from participants who resided in Serbia and considered themselves Serbian expressed feelings of prejudice at the ICTY. They claimed that the bias of who was tried
As part of their ‘Gotov je’[He’s finished – referring to Milošević] slogans, Otpor developed the ‘Fleka’ [translating to Stain] advertisement where they played with the daily banal task of washing stains. They attempted to reveal how dealing with this stain is part of their everyday reality by linking it satirically to everyday tasks. In their campaign, they subversively play on the idea of cleansing where the ‘spokeswomen’ seems to be championing the best ‘formula’ for getting ridden of the toughest stains especially those with a 10 year severity.

In the advertisement, she clutches a t-shirt with a picture of Slobodan Milošević’s face in black and white on it. She goes on to apply the ‘detergent’ to the t-shirt referring to the image as the stain and thrusts it into the washing machine, when the following commentary is made:

“For ten years I have been trying to remove this stain, believe me I have tried everything. Now there is a new washer that has an excellent program that reliably, which permanently cleans…” [She lifts the shirt from the machine flawlessly white and purified she says]… “and see it works…”

The advertisement then runs with a voice over saying: “finally he is finished.” The provocative segment seems to suggest that the right mix cleanses the stains of society, and purifies or rather vindicates those who were against the Milošević regime. Through its suggestive tone, the campaign implies that this is a collective problem not just a view harbored by a minority. They place the cause within a body of historical discontent reaching back to before the conflict broke out.

It also, to a degree, promotes an aspect of the transitional justice ideology of accountability and rule of law by demonizing the leader’s image and power. For the most part, Milošević’s party relied on hard uses of national broadcasting mediums to communicate pro-nationalist propaganda. In response, Otpor subverted this by creating advertisements with a satirical

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9 Otpor later went on to win an MTV ‘Free Your Mind’ award for their campaigns and logo http://article.wn.com/view/2000/11/16/Yugoslav_opposition_movement_Otpor_wins_MTV_music_award/. Furthermore, most of their campaigns had English subtitles – suggests that their audience was beyond Serbia.
tone, to serve as a mechanism for breaking up the Milošević norm of nationalist atmosphere. The transitional justice ideology was translated in a subversive way by framing ‘advocacy’ for removing the offender (the dirty leader). The point they raised was that the dirty leader and their action implicated the nation and perennially associated them to the atrocities by way of representation. The campaign suggests that this has locked citizens into a politics of defeat, and responsibility for the suffering (individually, economically, and socially). This narrative of stains provides insights with how local tensions were harnessed, mobilized, and pulled into the broader building of consensus that promoted a new political system and state.

Defeated by leaders: war crimes

The other form of defeat by leaders is seen in reactions to the war criminals and crimes. This is where we find new states dealing with unheard victims, highlighted by victims associations still fighting for the support of their new governments. Many local victim association representatives in Bosnia and Herzegovina have projected feeling defeated by the new post-war agenda for governance that continues to shadow their experience. As recent as 2011, a local government agency in Bosnia and Herzegovina allowed for it to become the site of ‘fictional’ violence (by allowing war rape film to be shot by international film crew). The initial response of representatives from “Women Victims of War’ and Association of Concentration Camp Torture Survivors was to lobby for the permit to be revoked. They interpreted the

[Another campaign called for ‘Slobodan Milošević, save Serbia and kill yourself’ [Spasi Srbiju i ubij se!] Otpor put together lyrics to the effect of: Spasi Srbiju i ubij se...Ti si mi rekao da sam izdajica...Ti si mi rekao da sam fašista i anarchista...meni si uzeo moja prava...’gotov je.’ [Translates to you told me I am a traitor... you told me I am a fascist and an anarchist... you took my rights... save Serbia and kill yourself...he is finished.]

(The Stain (Fleka) - October 2000) http://www.youtube.com/watch?v=4DAJct2qL1g&feature=related

[Although I noted Bosnia, I do acknowledge the grass roots campaigning of victim organizations throughout the region in Serbia, Croatia and Bosnia. Do to the limitation of the paper I merely select this event to project the social tension in this particular instance. In the past 20 years many Women’s associations have partnered up to push for awareness and visibility.

[The permit was revoked – then granted once the film production team demonstrated full criteria for filming according to the state standards. The film “In the Land of Blood and Honey’ was produced and released December 2011 in a seat of controversy. More information]
filming of such social experience as the taking of their voice and feeling that their government again did not shield them. Therefore, re-livening feelings of not being protected:

“by giving in to Hasecic, the Bosnian government essentially collectivised what should be individual memories of the war, which fosters a culture of collective victimhood to be used for ethno-national political purposes… „We can clearly see that politicians and clerics emerge as spokespersons for women victims, their stories and their rights, and that’s what I call the political exploitation of trauma” (Hopkins, 2011).

The unconsolidated nature of NGOs conveys an unconsolidated victim voice with regard to the experience of accountability for victims of sexual violence. The instrumentalisation of their experience has produced a particular politics locally where a distinguishing idea of victim and the discourse associated to it persists. In such an instance, the postwar issue pits individual victims within a complicated political vacuum where their anxieties regarding lack of recognition and protection in the new system, such as lack of status within the new order, has lead local governments down a path of pressure decision-making where they attempt to quell possible tensions by reacting to the call of a predominate victim identity. This result has left other victims who do not link in with organizations and associations identifying with the cause of war rape victims:

“they say authorities do not help them, only meting out financial assistance through established associations, which means as few as 2,000 women have registered as rape survivors. „I have yet to see any campaign where anyone explains how to claim status as a civilian victim of war, or rape victim. Nobody wants to speak about it…” (Hopkins, 2011).

The politics between the different organizations, and the issuing of a permit demonstrates how the state is perennially tied to judicial obligations by locally being held accountable. To an extent, the significance a particular type of victim has had in how these issues are addressed, seems to be a


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remaining taboo. The particular idea of war rape victim is linked in with a broader “victim profile,” namely referring to the ICTY interpretation of individuals who were targets of such violence. This is where particular legal idea of victim and victimhood emerges from ICTY cases and the antiquated application of legal principles during prosecutions.

An ICTY understanding of victim is produced through the courts and the cases, which is determined by the nature of (war) crime. Definitions have emerged from presenting legal facts accepted or outlined in the prosecutions to demonstrate the political nature of the crimes, and that they are victims of political crime. The ICTY cases have established a particular ‘international judicial’ notion and narrative for what it means to be victim (Stover, 2005: 5). Jo-Anne Wemmers and Anne-Marie de Brouwer work notes that foundations for identifying victims are ‘individuals as victims of crime’ when handled in international legal frameworks and extended to the local scene (Wemmers, de Brouwer, 2011: 279). The courts became the ‘frontline’ for where the identification and recognition of victim and their experience, which writes victim identity\(^\text{13}\) into a political violence narrative such as mass victimization, atrocity, or “systematic rape.” Socially this victim type is established when transferred locally through international policy and documents issued to state agencies and NGOs, outlining how to deal with victims, such as TJ guides\(^\text{14}\) for the state or when NGOs involved in Outreach programs help connect ‘victims’ to prosecutions at the ICTY (Popović, 2008: 115). Local dealings with victims have been problematic, where associations still feel invisible (Amnesty International Report, 2009).

The political anxiety of protecting these victims has priority in the new politics, as demonstrated by the local governments move to revoke a permit once some of the more established Victims of War associations lobbied. Furthermore, this case also demonstrates the lack of consensus between victims and the associations who have risen through the TJ context. Thereby, depicting the deficits underwriting social concerns regarding marginalization based on being a victim of the past regime. This lack of consensus is a continued anxiety that the new government is faced with and is pressured by defining its local political obligations.

\(^{13}\) For more see Bouris, 2007.

\(^{14}\) I refer to a variety of guides and manuals developed in collaboration with local NGO representatives and state officials for the different territories over the past twenty years. One example is Popović, 2008.
Organizational self-interest becomes the particular consequence of victimhood in so far as associations being caught in a sustainability crisis. Namely, as they try to sustain their existence in a context that has yet to recognize the full circumstances of their experience both during and after the war. As a result, a particular idea of victim is preserved to the detriment of victims who do not fit the ICTY determined victim profile, which for most local concerns has produced a social anxiety in terms of a limited if not absent local discussion on such victim experience. This suggests there continues to be a constricted understanding of war rape victims through judicial outcomes and prosecutions that have gone on to dimpled local political transformation in terms of shifting state protection parameters where they had failed previously. Victims continue to be streamlined or sidelined in this dynamic of justice as a social practice, framing how they are to be depicted locally not just judicially, and therein addressed by the new state government. As noted by Belma Becirbasic: „Victimhood is the main historical narrative that fuelled the ethnic conflict in the first place – you can imagine how dangerous the consequence can be, and that doesn’t contribute at all to the reconciliation process, but on the contrary undermines it“ (Hopkins, 2011).

The failure to protect in the postwar climate is the failure to protect and represent. It creates a political sensitivity for the new government who acts when international public scrutiny arises. The victimhood discourse has in such an instance burgeoned the consequences as unresolved social and political issues, and thereby anxieties of the people that then challenge the new systems and the particular Hague idea of victim have come to frame.

Elsewhere the defeat by leaders in Croatia was expressed in response to the new impunity laws announced in October 2011. Local NGOs, Civic Committee for Human Right (GOLJP) and Documenta signed protest statement\(^{15}\) and staged public protests on preventing the Impunity bill on the nullity of certain legal acts of the Yugoslav National Army (JNA) judicial bodies. They claimed that the law revealed the superficiality of the government’s compliance with international obligations like handing over former leaders.

\(^{15}\) The groups went on to organize a round table in Zagreb, March 2012. They invited the participation of Croatian NGOs and state officials, such as Ivo Josipović. The key NGOs involved were: Documenta, the Citizen Committee for Human Rights, and the Centre for Peace, Nonviolence and Human Rights. The round table dealt with discussing how war crimes were handled in terms of managing their sentences, which in Croatia’s case has involved a reduction policy.
According to the groups, and their civilian supporters, the law would continue to locally blanket the crimes by stating in the Impunity laws that the crimes were security measures protecting Croatia (Pilsel, 2011). The protests and public outcry capture the anxiety of the people in terms of feeling that the laws would allow the government to pursue, and reignite a culture of denial where many victims would be ignored again.

Managing the feelings of defeat

The second sense of political anxiety\textsuperscript{16} manifests through the state need to manage people’s feeling that the national political agenda was defeated. This level of defeat refers to freezing the continuance of political regime and creating consensus for the new order or new politics where new governments concentrate on abiding by international justice frameworks and EU Integration criteria (Peskin, Boduszynski, 2011). Jelena Subotić suggests that this is one of the many paradoxes of international justice compliance, which draws domestic tension among segments of society:

“…compliance with international justice creates domestic political backlash as it is unpopular with segments of society that supported past policies, and it can even lead to political instability as old-regime loyalists mobilize against the transitional government out of fear of prosecution” (Subotić, 2009: 364).

Locally, when looking at the societal level, I claim that international compliance is experienced as a state system built in the name of recognising ‘a Hague idea of victim’ and responsibility, which has caused for major system shift where locals do not identify with the new imaginary that has emerged from such dense international management. This leads to the question ‘what is justice to me?’ For this I draw on the example of Urban Movement Mostar

\textsuperscript{16} Political anxiety is different from political pressure is it captures the sensibility of governance – rather than political pressure in terms of procedural lobbying – it is more the impulse of politics or the way the state reaction – denoting the emotional aspect to politics – where discussions are made from a body of tensions and social legacies requiring management and address. Political pressure is more the institutional pressure. The policy pressures that leave no options but compliance thereby a politics of compliance. The political anxiety is the internally informed reactions – they are the memory and stress of the people in the government – making decisions with anxious responses. Does not denote a lack of rationality.
The organisation tried to use art to express local social issues and respond to tensions that have emerged from the mass victimizations during the war. They tried to point out what it felt like to live in such a context of defeat in terms of disagreeing with the past nationalist regime that took their pre-war existence and norms, as well as within a new order that struggles to manage social divisions. One of their numerous actions was a radio program called “Walking down the Victims of Democracy Street.”

The other more popularised action involved creating a monument of Bruce Lee (as a carrier of justice). The construction of the statute was used to express feelings of the people who were exhausted by a sense of justice that did not match theirs and want for the new state identity to be craved by Bosnians for Bosnia and Herzegovina. Their activities resonate a strong voice of resistance toward a new order in terms of building their own sense of justice.

The project came from a broader reform project, Bauhaus “Mostar 2007,” that looked at establishing urban normality through a European vision. A common trend since the establishment of ICTY, and the Dayton Accords, was international organisations aiding the establishment of particular rule of law ideology like anti-nationalist consensus (Subotić, 2009: 369). The Bauhaus Action plan for Mostar is an example of this. The project was inspired by the local tension regarding ideological constraints that emerged from the post-war interventions. The Stiftung Bauhaus Dessau foundation, which provided support for the actions, noted in their project report how the local issues of injustice are a strong factor in the local transformation process:

“the project focused on the city of Mostar in order to activate spaces and to raise public awareness of the absurdity of the situation by addressing both the locals and the internationals… art may take on a special role, as it allows a fresh view free of ideological constraints.”

Under these terms, the Urban Mostar Movement took the opportunity to demonstrate the strain of having to digest international understanding of justice in their Bosnia. This was echoed by one of the movement leaders Veselin Gatalo, when he explained the decision to chose Bruce Lee as the monument subject: “far [enough] away from us that nobody can ask what he did during World War II” and “part of our idea of universal justice--that the good guys can win.” (Zatichik, 2006)
Other co-founder, Nino Raspudić, noted that Bruce Lee allowed them to express feelings of “deliberate rejection for “great narrations” that had spurred violence and deeply politicized even the minutia of everyday life in the region”.

Feelings of accountability

The third type of feeling defeated for managing, resonating society as victim, is ‘feelings of accountability.’ This is connected to socially reproducing an idea of responsibility, which has predominately had a legal frame. In the NGO community, it manifests in their projects when interpreted, or explored in terms of ‘feeling responsibility,’ raising questions like who is responsible and for what as a way to come to terms with the present systems in international judicial environment. This seems to be a central theme in NGO projects engaging with victims and veterans, and policy formation via advocacy of individual to societal needs. They concentrate aspects of their work on including self-reflection as a starting point to establish their programs. I draw on the work of Viktimološko Društvo Srbije (VDS) which developed their Third Way program with the aim for dealing with reconciliation in Serbia. As part of the program they explored and sought to produce approaches for dealing with the past by focusing on understanding the self (Nikolić-Ristanović, 2004; 2010). The Third Way program dealt with the idea of individual and social responsibility as partially influenced by the broader politics of trials; international and local obligations. They looked at types of feeling victim ranging from being victims of circumstances to victims directly affected by the political violence of the past conflict. They developed a ‘non-accusatory model, as way for distilling an inclusive environment for individuals to face the past. They worked with the objective to indiscriminately allow participants in projects to explore their individual experiences of the war and post-war: “The method used, which included exploring, „trying“ and „exersising“ inclusive approach” (Nikolić-Ristanović, 2010).

This work took the ‘responsibility’ question into an individual experience and implicitly explored the idea of responsibility framed by Transitional Justice principles. Ultimately, the approach involved the intersecting of Transitional Justice ideas into Third Way. Through its holistic approach and intersection of TJ, VDS address the question of responsibility in social terms:

http://memoryandjustice.org/article/discussion-of-mostars-bruce-lee-statue/
The approach that intersects with the third way as well is “transitional justice.” Transitional justice in general is concerned how “states in transition from war to peace or from authoritarian rule to democracy address their particular legacies of mass abuse”. It is “multidisciplinary field of study and practice that encompasses aspects of law, policy, ethics and social science” (Freeman 2006: 4 in Nikolic-Ristanovic, 2010). Similarly as majority of members of ZAIP, leading scholars in the field of transitional justice see punitive justice as a necessary element in the overall process toward reconciliation, at the same time recognising that other ways of dealing with past are also important (Minow 1998; Huyse 2003a in Nikolic-Ristanovic, 2010).

Responsibility in social terms

The responsibility issue is also connected to accounting for the dead victims who live\(^{18}\) in investigation processes (Verdery, 2000). This is where ‘responsibility’ obligates the people and the state to face anxieties of families, and victims in terms of finding those deemed ‘missing.’ This leads to responsibility for the bodies through the process of identification.

Forensic findings

In subsequent years to the ‘end’ of the conflict there has been increased momentum for recovering forensic facts where particular process were developed around forensic identification, confirmation (as a confirmation of crime) and recording of human remains. Such processes were set off by the ‘pressures’ for proving the wrong doing, and proof of addressing the nature of the political violence. Forensic truth seeking was initially accepted through

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\(^{18}\) In her work “The Political Lives of Dead Bodies,” Katherine Verdery explores post-socialist politics through the symbolic interpretation of dead public figures portrayed as social and political luminaries. She discusses how post-socialist politics across Eastern Europe deal with the past by giving such dead and their bones political life. Therein she suggests that a norm with post-socialist politics is to enliven ‘old bones and corpses’ of public figures through a re-orientating of the present. For more see: Verdery, 2000. I draw parallels with Verdery’s view to demonstrate how in the post-war TJ context of dealing with the past in terms of seeking the missing, and addressing the finding of bones. The dead and the missing are enlivened and permanently linked into the new political order through the anxiety of families and the communities these missing persons belonged to. They become the silent community and carriers of justice. Through their identification they make visible the surviving community and their needs as vulnerable citizens.
the Dayton Accords (ICMP: 2002) where the importance for identifying the mass body counts was noted (UN Case file no. IT-95-5/18-T; March 2010). This was gradually translated into the legal judicial arena as a requirement and resource for building cases seeking to achieve accountability over the ‘bodies’ – or rather the dead and the crime.

Therein, to an extent, the need for finding evidence was set off with judicial proceedings requiring ‘facts’ to build cases. Such investigative process was not just about cases and finding evidence of crime; there is also the consequences of victimhood in terms of families seeking the whereabouts of their family members or finding the individuals who went missing (Mašić, 2004). For instance, local Bosnia and Herzegovina group *Udruzenje Prijedorčanki Izvor (the Source)* was established to help victims and their families with regard to missing persons, internally displaced persons, and lobbying for improving the status of victims and the dead through domestic systems. One of its predominate ongoing projects is finding the bones of family members, and support for involvement in Court proceedings. *Izvor* set up the Court support network project with the support of the Norwegian government. The project works to develop a network for witnesses. The goal is to disseminate court support services throughout the whole region.

In keeping with the need to address matters related to the missing, *Izvor* annually marks International Human Rights Day with a peaceful protest walking of streets in Prijedor as a symbolic gathering. One of the founders, Edin Ramulić, notes the walk is peaceful protest expresses the local displeasure, and need for assistance from domestic bodies with finding the bones of their loved ones:

> “the families of victims faced with mere survival, because they still have not achieved on the basis of the civilian victims of war, and said to them, in the case of

19 10th December 2011, the organization Izvor held the International Human Rights Day Protest march, which called for supporting - symbolic gathering of five minutes to 12.00 hours on the main square, where peaceful protest to express their displeasure, and requested that the relevant help be given to them for finding the bones of their loved ones. http://fotogiga.com/index.php?option=com_content&view=article&id=525%3Aprotestnasetnja&catid=34%3Anajnovije

20 For more on the Court support network project: IZVOR – Izvor (The Source) see: http://www.norveska.ba/ARKIV/Ongoing_Projects/IZVOR/
Bosnia, the largest number of lives in this city...The missing are denied the right to life, the right to a dignified burial and right to identity"

Therein accountability is expressed in terms of accounting for their people. Once the social concern for the dead to be identified is achieved then survivors become visible in the new order as they rebuild their community from the foundations of accounting for their dead. The dead are not ancestors – rather they are the silent community members of a society whose civic participation is validated through the identification of the bodies as the identification of injustice.

Izvor has linked in with the DNA project of International Commission on Missing Persons (ICMP), which was set up G-7 in 1996 (ICMP: 2002). The ICMP project has helped with confirming not only who is victim (in their direct link to the political violence) but also meant that the bodies are (one by one) anxieties for the state to manage. From this a political impetus emerged, which involved locally ensuring the representation of people as a way for managing previous marginalization. This has lead to the establishment of particular government bodies to directly evidence that the people are accounted for in the new Bosnian state, such as the House of Representatives of Peoples. This body was recently involved with drafting a bill on sanctioning genocide denial, which was translated directly from the European Convention, and therein points to the implicit meeting of international obligations like addressing accountability. Eventually it became a draft law on amendments to the Federation of Bosnia and Herzegovina (FBiH) Criminal Code, aiming to punish denial of genocide, war crimes and crimes against humanity and other crimes punishable under international law. The enforcement of the law is to include a prison sentence of three months to three years.21

21 http://tacno.net/Novost.aspx?id=11017
Conclusions

The reform phase of state building through accountability and compliance has determined different internal consequences expressed in response to particular experiences of judicial obligations. In such an environment, local individual and political anxieties in the form of different types of ‘Political Defeat’ have shaped the social and political transformation of each society in an era of dense social and political management. This has meant that the management of feeling defeat has involved establishing particular systems; and managing social order in terms of censorship, denial, self-imposed resolutions, and containing of the past.

In response, some NGOs take a role as medium between international Transitional Justice agenda and local field engagement (where they call up the conditions of local society when ‘exposing’ new post-war ‘wrong-doing’). This is evident with the recent increase in the establishment of projects framed by international experiences with managing victims, and truth investigation regionally such as The Coalition for RECOM (Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991-2001). Further to this role NGOs become a vehicle of exposure and challenge to reveal the link and relationship of individual to national to regional anxieties. These anxieties are the feelings of defeat; the feelings of denial; feelings of responsibility; and feelings of disconnection with the new regimes that are European Union focused.

Such anxieties in turn frame the nature of new government policies, and activity as they try to negotiate social problems, which means managing the local feelings of defeat, with international obligations. The state’s performance is one of contraction as the new governments need for adhering to the experiences of the people, as well as rehabilitating the image of the new state through fulfilment of judicial obligations. Ultimately producing responsive governance and politics. Therefore the new state is built on a bed of: ‘Legal vs. social responsibility’ as an imposed guilt, pain, loss, or trauma, where everyone is a victim and everyone defeated in terms of new verses old imaginaries and hope.
References


Posledice sudskih obaveza kao politika tranzicije u posleratnoj Srbiji, Bosni i Hercegovini i Hrvatskoj

Ovaj rad bavi se pojmom žrtve od individualnog do društvenog nivoa u okviru konteksta tranzicione pravde i pomirenja. Pojmovi pravde i istine postali su u velikoj meri prisutni u posleratnim državama na Balkanu. Reforma države zahtevala je obnavljanje društva bazirano na specifičnim pravnim interpretacijama političkog nasilja. Kao rezultat toga, era pravosudnih obaveza je dovela do okvira vezanog za regeneraciju, reforme i rehabilitaciju društva. Zato se u radu razmatraju posledice ratne viktimizacije u pogledu lokalnih odgovora na to kako se prošlost „obrađuje“ kroz institucije tranzicione pravde poput Međunarodnog krivičnog suda za bivšu Jugoslaviju (ICTY), i povezanih ad-hoc mehanizama, kao što su programi na terenu. Uspostavljanje takvih sudskih procesa pokrenuli su specifična pitanja kao što su: da li se društvo može posmatrati kao žrtva? Kako društvo može biti žrtva? Koristeći društveno-politički pristup, takva pitanja su razmatrana kroz paradigmu političkog poraza kako bi se otkrila specifična politička anksioznost koja obeležava nova društva i njihove politike. U ovom radu ideja o „državnoj anksioznosti“ i „političkom porazu“ koristi se kako bi se diskutovalo o tome šta je na lokalnom nivou nastalo zahvaljujući jednoj takvoj politici u tranziciji.

Ključne reči: žrtve, transformacija, NVO, tranzicione pravda, pomirenje.