

Culture of Dependency and Federal Spirit in Bosnia and Herzegovina

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Abstract: Almost thirty years after the General Framework for Peace (DPA) was initialled in Dayton and then signed in Paris, Bosnia and Herzegovina has not taken full ownership over its governance. The Office of the High Representative (OHR), which has been given the responsibility to oversee the civilian implementation of the DPA, has been heavily criticized for being controversial, undemocratic, illegal, and it has been seen as an obstacle to the EU integration of the country. This paper analyses the effects of civilian international presence on the governance of Bosnia and Herzegovina. It argues that such strong and long-lasting international control fosters a culture of dependency in Bosnia and Herzegovina, which in turn jeopardizes the creation of federal spirit in the country.

Keywords: federalism, federal spirit, international dependency, Bosnia and Herzegovina

Introduction

In 2000, Wolfgang Petritsch, then the High Representative for Bosnia and Herzegovina, called for local ownership in Bosnia and Herzegovina and warned that even “the limited powers of the High Representative had led to a certain culture of dependency” (Office of High Representative, 2000). Twenty-five years later, local ownership has still not seen the light of day, and a culture of dependency has taken over the political and social

landscape of the country. Local ownership is a debated and contested concept, in the literature often related to peace building or development aid. Some argue¹ that it is a concept deeply rooted in liberal governance, while others see it as a colonial principle of indirect rule (Ejdus, 2017). As the purpose of this article is not to examine these and similar claims, the concept of local ownership is understood here as the capacity, responsibility, and accountability of a country to set its own agenda, to define and implement projects, policies, and strategies on its own, in other words, to exercise full autonomy and sovereignty over its territory.

Culture of dependency is a broad phenomenon that has many aspects, including social, economic, cultural, and political ones. Social or welfare dependency, for example, relates to the state in which people rely on government welfare benefits and programs as their main source of income, without which they would be in a state of poverty (Cronin, 2007). In social sciences, especially in economics, the theory of dependency is used as a theoretical tool to understand underdevelopment and explain global inequalities and the so-called North-South divide. This theory emerged in the 1950s as a reaction to modernization theory (Herath, 2008), and it was very prominent in the 1960s and the 1970s. For the purpose of this article, culture of dependency will be used to denote a reliance on external patronage and international support, and it is understood here as a concept that is the polar opposite of local ownership.

This article argues that strong international presence creates a culture of dependency in which local stakeholders rely on the support of the international community in the decision-making process and governance. This in turn goes against the backbone of local ownership and can have a negative effect on fostering a federal spirit in multinational federal countries, such as Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina does not *per se* define Bosnia and Herzegovina as a federal state. While the Bosniak political elite never refers to the country as a federation, Serbs say the country needs to be set up as a form of federation or confederation (RTS News, 2009), and Croats suggest “a federal model” of state organisation (RTVBN News, 2015). Domestic rivalry between those advocating more autonomy and those with centralist aspirations seems to be the main generator of

1 For more discussion see Ejdus (2017)

internal disputes and tensions in Bosnia and Herzegovina. Critics of the current arrangement (mostly the Bosniak political elite) claim that the “complicated” system makes Bosnia and Herzegovina inefficient. This paper argues that the federal structure is not really to blame; more at fault is the culture of dependency and the lack of a “spirit of federalism” or “federal spirit.” In order to show this correlation, the paper looks at the main features of the institutional architecture of Bosnia and Herzegovina and its internal dynamics, followed by an analysis of the civilian international presence in the country that has created a culture of dependency.

Consociational federal designs and internal dynamics

The war in Bosnia and Herzegovina ended in November 1995, when the General Framework Agreement for Peace was negotiated in Dayton (USA); the agreement was signed in Paris in December 1995.

The bulk of the literature on the war in Bosnia and Herzegovina ignores the complex interethnic dynamics of alliance formation, including infighting within the alliance or even within the same ethnic group. One of the few authors to deal with this is (Fotini, 2012), who states that “all warring parties were both foes and allies at different times throughout the conflict: Serbs against Muslims and Croats, Serbs with Muslims, Serbs with Croats, and Muslims against Croats” (Fotini, 2012). There was also interethnic conflict between Muslims (called Bosniaks from 1993) in Cazinska Krajina, the western part of Bosnia and Herzegovina. The creation and shifting of loose interethnic alliances that were seen during the war has continued to be an important feature of the political dynamics of the country. For example, during the last decade Croats and Serbs have formed a sort of informal political alliance as a response to a growing Bosniak demand for the unitarization of the country.

Bosnia and Herzegovina has often been portrayed as a frozen conflict, a failed, fragile, or dysfunctional state in danger of collapse, especially in the Western press and literature (Belloni, 2009; Bieber, 2010). Bosnia and Herzegovina has often been called “little Yugoslavia,” referencing

the fact that different nations and religious groups have lived together peacefully for a long time. However, a closer look at the history of this region shows that the peaceful multi-ethnic coexistence is more of a political myth than a reality. If we look at the wars that have been waged in this region, the nations or ethnic and religious groups living in the territory of today's Bosnia and Herzegovina have rarely fought on the same side, including the two World Wars.² The turbulent history of the area that constitutes today's Bosnia and Herzegovina is reflected in the internal dynamics of the country. How the history of Bosnia and Herzegovina is interpreted by Bosniak, Serb, and Croat historians is also translated into the political life of the country, mirroring the long-lasting divisions of the society. As (Kasapović, 2005) points out, the work of Bosniak, Croat, and Serb historians on Bosnia and Herzegovina differs to the extent that a reader has the impression that they are writing about three different countries; in some cases, only the dates and locations match.

Federal structures in Bosnia and Herzegovina were introduced, or rather, imposed by the international community to resolve a four-year civil war. Some of the federal arrangements of the Socialist Federal Republic of Yugoslavia, including the collective presidency, principle of rotation, principle of ethnic balance, and principle of constituent peoples, are part of the federal structure of Bosnia and Herzegovina. (Pearson, 2015) observes that the idea of ethnic balance, also called the “national key,” was not invented in Dayton, but it was an “important reality” in the former SFR Yugoslavia.

Proposed solutions to problems of plural societies are often found in constitutional models of federalism and consociationalism (Lijphart, 1997). Although federalism and consociationalism may appear to be different concepts, they are in fact closely related, and under certain conditions a federation can be a consociation and vice versa (Lijphart, 1997). A federation, according to (Lijphart, 1997), is fully consociational “only if all four principles of consociational democracy are present”,

2 See for example Holzer, A. (2008). *Das Lächeln der Henker. Der unbekannte Krieg gegen die Zivilbevölkerung, 1914-1918*. Wissenschaftliche Buchgesellschaft; Milosevic, B. (2016), *Srpska pravoslavna crkva i svestenstvo u Bosni i Hercegovini u Prvom svjetskom ratu*. Andricev Institut; Hautman, H. & Kazimirovic, M. (2016). *Dzelatov smesak: Nepoznati rat protiv civilnog stanovništva*. Prometej. Ekmečić, M. (2007). *Dugo kretanje između klanja i oranja: Istorija Srba u Novom Veku 1492-1992*. Zavod za udzbenike.

which include segmental autonomy, informal and formal grand coalition, proportionality, and veto powers. However, as correctly pointed out by (Caluwerts and Reuchamps, 2015), federal and consociational elements are rarely found simultaneously in a political system. For example, today only Switzerland, Bosnia and Herzegovina, and Belgium could be seen as true examples of political systems that combine consociationalism and federalism (Caluwerts and Reuchamps, 2015). Bosnia and Herzegovina represents what (Strochein, 2003) calls “divided house states”. The main characteristics of divided house states are severe ethnic cleavages (e.g. political parties composed along ethnic/linguistic lines) and diverging views on whether the state should be more unitary or decentralised. While consociational federal designs have been criticized for creating deadlocks and malfunctioning states and perpetuating divisions, they can be regarded as successful conflict management tools that have bought off peace in Bosnia and Herzegovina.

Complex consociational federal institutional architectures such as the one found in Bosnia and Herzegovina, Belgium, or Switzerland, require a high degree of mutual cooperation, mutual trust, and a common will for the system to function. Such an environment would necessitate the creation of highly institutionalised or ad hoc mechanisms of cooperation and coordination to stimulate cooperative intragovernmental relations in all spheres of mutual interests. However, these mechanisms remain underdeveloped except in EU affairs. The necessity of having more institutionalised cooperation and coordination is evident in the process of EU integration, as many EU issues have a regional dimension. Therefore, one of the conditions for Bosnia and Herzegovina to submit a credible application for EU candidacy status was its demonstration of an effective mechanism of coordination between all levels of the administration in EU matters. Although negotiations on the issue lasted several years, a mechanism of coordination was adopted in 2016.

The functionality of multinational federations also necessitates federal loyalty, also known as *Bundestreue* or *loyauté fédérale*, which represents “the commitment to work together to achieve the objectives and fulfil the needs of the federal polity” (Kincaid, 2005). The success of a federation is characterised not only by its constitutional arrangements but also by the country’s “permeation with the spirit of federalism in sharing through negotiation, mutual forbearance and self-restraint in the pursuit of goals, and a consideration of the system as well as

substantive consequences of one's acts" (Elazar, 1987). Federal spirit, according to (Burgess, 2006), refers to "the bonds that unite the political community - the reconciliation of individual and collective needs that bind the political community". This loyalty, commitment, mutual trust, and forbearance are not something that can be imposed or forced upon by outsiders, in the case of Bosnia and Herzegovina by the OHR, but it has to come from within. The question is whether under the circumstances of a "quasi-protectorate" through the Office of the High Representative federal loyalty or the federal spirit has ever had a chance to evolve.

International civilian presence and a culture of dependency

The position of the High Representative was created under the Dayton Peace Agreement, and the Office of the High Representative (OHR) is an *ad hoc* international institution responsible for overseeing the implementation of the Agreement. In December 1997, the Peace Implementation Council (PIC), an *ad hoc* body composed of 55 states and international organisations³ interested in Bosnia and Herzegovina, gave the High Representative (HR) vast powers ("Bonn powers") including the competency to remove elected politicians and officials, to make binding decisions, and to impose legislation. There have been no legal justifications or grounds, as some authors suggest (Gromes, 2010; Banning, 2014; Parish, 2007), for such vast powers to be given to the HR. As correctly pointed out by (Parish, 2007), the declaration that was issued after the PIC meeting in Bonn in 1997⁴ "runs

3 PIC was created at a conference in London on 8-9 December, 1995; however, although it had been created before the Dayton Agreement was signed in Paris, it was not an official part of the Dayton Peace Agreement. PIC members and participants include, among others, the US, the UK, the Russian Federation, France, Germany, Italy, Japan, China (resigned in 2000), the IMF, NATO, ICRC, the UN, OSCE, UNCHR, ICTY, the World Bank, etc. The PIC Steering Board is composed of Canada, France, the UK, the US, Germany, Italy, the Russian Federation (in July 2021 the Russian Federation advised that it would no longer participate in PIC Steering Board meetings, and since February 2022 it has suspended the financing of the OHR), the Presidency of the EU, the EU Commission, and the OIC represented by Turkey. For more see <http://www.ohr.int/international-community-in-bih/peace-implementation-council/>

4 For more see <http://www.ohr.int/pic-bonn-conclusions/#11>

quite contrary to the spirit and text of Annex 10 to the DPA and was legally indefensible". In other words, the HR moved from being a facilitator and mediator, as envisaged by the International Treaty of Dayton, to being able to issue binding decisions (Parish, 2007). With these Bonn powers, (Gromes, 2010) argues, the OHR has "served as an additional centre of legislative and executive rights". (Banning, 2014) also analyses at length the absence of legal grounds for the Bonn powers to be introduced in the first place and argues that they could not be delegated through the PIC for several reasons. Primarily, the OHR is not a subsidiary organ of the PIC, so the PIC could not delegate such powers to the OHR; secondly, the PIC could not designate powers that it does not possess itself, and a delegation of powers was never intended (Banning, 2014).

The transfer of most of the powers to the central state was either imposed or initiated by the OHR. Since December 1997, the High Representative has extensively exercised its Bonn powers: politicians and high-level officials have been dismissed, and laws and decisions have been imposed by the OHR. (Gromes, 2010) states that in seven years (from December 1997 to December 2004), almost 190 politicians and other officials (including directly elected Croat members of the Presidency)⁵ were dismissed⁶ by the High Representative; in the same period, the High Representative made more than 660 decisions. President of the Republika Srpska Milorad Dodik (2015) claims that since December 1997, the High Representative has imposed 900 decisions, and the Republika Srpska has lost over 80 powers,⁷ out of which only three⁸ were transferred in accordance with the Constitution of Bosnia and Herzegovina and the Dayton Peace Accords.

5 In 2001, Ante Jelavić, the Croat member of the Presidency was dismissed by the High Representative. In 2005, another Croat member of the Presidency, Dragan Cović, was dismissed by the High Representative (re-elected as a Croat member of the Presidency in 2014). Banning (2014)

6 Officials were often dismissed without the allegations against them ever being proved. See Parish (2007).

7 These include certain powers that relate to education, health, agriculture, metrology, intellectual property, veterinary issues, statistics, insurance, public procurement, energy, judiciary, IT, and public administration, which led to the creation of over 40 different agencies and institutions at the BiH level. Most of these agencies and institution exist at the entity level. See Vranjes (2020).

8 The Constitution provides that Bosnia and Herzegovina shall assume other responsibilities as agreed by the entities. As for the transfer of powers from the entities to the BiH state level, the former have only agreed in three cases so far: Indirect Taxation (VAT), defence, notably the creation of the joint armed forces of BiH, and the creation of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

(Gromes, 2010) argues that the transfer of powers and responsibilities from the entities to the level of Bosnia and Herzegovina can be partly explained by the prospect of the EU integration. According to (Woelk, 2012), however, while EU integration is a shared goal of all political stakeholders in Bosnia and Herzegovina, it is not “neutral to the positions of the entities: strengthening the state threatens the full autonomy of the Republika Srpska and favours the position of Bosniaks (and to a lesser extent, of Croats)”. In fact, many in the Republika Srpska say the desire for EU integration is often used as an excuse to make Bosnia and Herzegovina more centralised. In his memoirs, former High Representative Paddy Ashdown (2007) confirms this claim and says that he persuaded former EU commissioner for External Relations Chris Patten that police reform in Bosnia and Herzegovina should fall under the EU umbrella: “I rang Chris Patten in late October and asked him if he would weigh in as Commissioner and say that these reforms were required if Bosnia and Herzegovina wanted to join Europe. As always he agreed, and we drafted a letter for him to send to the Presidents”.

Most of the OHR decisions, especially those related to the removal from public office, were not based on solid evidence, but on rather vague grounds of some sort of policy failure or failure to comply. Those removed had no right to appeal. In one day only, 30 June, 2004, 58 people, all of them Serbs, were dismissed from public office by High Representative Lord Paddy Ashdown (Parish, 2007). His predecessor Petritsch, right before he finished his mandate, issued 44 decisions, removing 12 people, imposing 24 laws, and amending the constitution of both Entities, in a tradition of what has become known as “airport decisions” (Parish, 2007). This trend of airport decisions has continued; the most recent example being Valention Inzko’s decision to impose amendments to the BiH Criminal Code in 2021, then leaving the country⁹. As (Knaus and Martin 2003) correctly state, the imposition of laws as well as institutions without public participation, which will be financed by the taxpayers of Bosnia and Herzegovina, are in direct violation of the most basic democratic link between taxation and representation.

With the High Representative’s imposition of many laws that transferred powers (Keil, 2013) from the entities to central authorities, power-sharing arrangements in Bosnia and Herzegovina have been

9 See <http://www.ohr.int/hrs-decision-on-enacting-the-law-on-amendment-to-the-criminal-code-of-bosnia-and-herzegovina/>

ignored, and the principles of reciprocity and consensual decision-making are undermined. (Keil, 2013) points out that with the extensive use of external impositions, Bosnia and Herzegovina has developed a political culture of dependency, leaving little room for a culture of consensus to evolve. It is also a clear indication that the long-term strategy of the international community in Bosnia and Herzegovina is to strengthen the central level. This vision is shared by the Bosniaks, who see the transfer of powers to the level of Bosnia and Herzegovina as a step closer to their ultimate goal – a unitary centralised state. Serbs, however, vigorously oppose the strengthening of the state and advocate more autonomy for the entities; they want Bosnia and Herzegovina to return to the “original” Dayton Agreement. Croats fall somewhere in between: while they do not oppose, at least not publicly, the strengthening of the central state, they have been campaigning for the revision of the Dayton Agreement to give Croats territorial autonomy. These divergent aspirations and visions on power sharing and the functioning of Bosnia and Herzegovina among Bosniaks, Croats, and Serbs, not to mention the international community, creates a fertile ground for tensions. As (Keil, 2013) sums it up, the biggest problem of Bosnia and Herzegovina is the “continued absence of consensus on the nature of the state, and the relations of the three constituent peoples to the state”. This absence of consensus is directly linked to the existence of a culture of dependency. Relying on someone else, mostly on the OHR, to solve internal problems and tackle challenges, instead of consensus-seeking, has become the new normal, especially among the Bosniak political elite.

The international presence in Bosnia and Herzegovina has had, according to (Knaus and Martin, 2003), two dynamics. First, the goalposts have been constantly moving, as challenges and aims are being met. “Like Proteus in the Greek myth, every time it appears to have been defeated, the problem with Bosnia changes shape” (Knaus and Martin, 2003). Second, each newly defined challenge has expanded the OHR’s power in order to fit the changing perceptions of why Bosnia and Herzegovina requires an OHR. The powers have grown “in scope and severity from nothing at all, through powers to impose sanctions and the interim laws designed to support the Dayton process, to absolute powers over an open-ended spectrum of issues” (Knaus and Martin,

2003). (Banning, 2014) questions to what extent the OHR “actually represents the supposedly unified interests of the international community and to what extent this dynamic represents the OHR’s strive for self-preservation”.

Conclusion

Bosnia and Herzegovina represents, as correctly pointed out by (Stroschein, 2003), a divided house state, “which contains proportionally similar groups with opposing views regarding whether the state should be more unitary or more decentralized”. While Serbs and Croats demand more autonomy on the grounds that the current constitutional arrangements are not efficient, Bosniaks and the majority of the international community use the same argument to ask for tighter centralisation.

The complexity of the institutional structure of Bosnia and Herzegovina was not, according to (Stroschein, 2003), produced by accident; asymmetric and complex governing institutions were introduced so that groups that disagree on the nature of governance could coexist. Such complex decision-making structures require a high degree of cooperation, and trust is the “oil” that makes the process go smoothly. “Without it, gridlock and polarization are more likely to surface and to remain a feature of politics, notwithstanding the arrival of a (fragile) agreement” (Swenden, 2013). However, in Bosnia and Herzegovina outsiders, who are not accountable to any elected institution at all, actually set the agenda, impose it, and punish those who refuse to implement it with sanctions (Knaus and Martin, 2003).

The Bonn powers and their extensive use are controversial at the very least. (Banning, 2014) argues that the Bonn powers do not even qualify as legal powers: the doctrine of implied powers does not apply in this case, nor could these powers be inferred from the UNSC resolutions. The UNSC support for their practice is merely political, and their existence, albeit powerful, is a delusive legal fiction (Banning, 2014).

Local ownership has remained a mere theoretical concept or a rhetorically accepted notion in Bosnia and Herzegovina, with no clear sign of when and how it will be operationalized. The interventionist

nature of the international presence in Bosnia and Herzegovina directly contradicts the idea of local ownership. It goes without saying that the international community has brought peace to Bosnia and Herzegovina; however its long-lasting involvement through the OHR has created a culture of dependency, which runs directly counter to the federal spirit, democracy, and equality of the peoples. It undermines a culture of dialogue, consensus, and trust, which is sine qua non for the functioning of any multinational and polarized federal country. Under the quasi-protectorate of the OHR, mutual commitment to the Dayton federal arrangement has not been able to emerge.

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