

Research Space
Journal article

Post-partition citizenship policies: Lessons from Post-Yugoslav federal states

Dzankic, J. and Keil, S.

This is a pre-copyedited, author-produced version of an article accepted for publication in Publius - The Journal of Federalism following peer review. The version of record Jelena Džankić, Soeren Keil, Post-Partition Citizenship Policies: Lessons from Post-Yugoslav Federal States, Publius: The Journal of Federalism, pjaa038, <https://doi.org/10.1093/publius/pjaa038> is available online at: <https://doi.org/10.1093/publius/pjaa038>

Post-partition Citizenship Policies:

Lessons from Post-Yugoslav Federal States

Jelena Džankić, European University Institute, jelena.dzankic@eui.eu

Soeren Keil, Canterbury Christ Church University, soeren.keil@canterbury.ac.uk

Abstract: Citizenship policies are important tools of inclusion and exclusion in a post-partition context. In most cases, they reflect the unitary and mono-ethnic character of newly established states. Their function in countries and territories where an ethnonational break-up resulted in further ethnically diverse societies is far more complex. Citizenship in multilevel states created through state disintegration is a counterintuitive combination of (1) the legacies of the old citizenship tradition and replications of the old federal structure, and (2) processes of ethnic engineering and designing group-centric citizenship regimes. Legacies of the old structure are framed by the modalities of break-up and initial determination of citizenry (e.g. the absence of zero solution), but strongly mirror elements of the previous multilevel construction of citizenship, including bottom-up derivation, ethno-national determination of membership, voting rights and representation. Discontinuities in citizenship policies reflect wider tensions between nation- and state-building (and destruction), and how these processes have been molded through different international influences. We undertake a case-study of two post-Yugoslav multilevel states, Bosnia and Herzegovina and the Federal Republic of Yugoslavia/the State Union of Serbia and Montenegro, with the intent of drawing broader conclusions on how citizenship policies can keep states together or break them apart.

What is the role of citizenship policies in post-partition states? Using the example of two federal states created after the break-up of socialist Yugoslavia – Bosnia and Herzegovina (BiH) and the Federal Republic of Yugoslavia (FRY) – we argue that citizenship policies are central to keeping such states together or to breaking them apart.

We focus on post-partition federations for two reasons. First, as both the Yugoslav and the Soviet disintegration highlight, ethno-territorial break-ups do not completely solve the issues of ethnic and cultural plurality (Heinemann-Grüder 2002; Grgić 2017). Instead, they can create new forms of diversity and potential conflict (Horowitz 2003). The ways in which citizenship policies articulate inter-group relationships and the balance between self-rule and shared-rule will be reflected in the governance of diversity within the state (Watts 1999; Elazar 1982; Burgess 2006). This is important because questions such as ‘who belongs’ or ‘owns’ and who does not and ‘who gets what rights’ and ‘where’ are the lifeblood of federal states. They shape the wider relationship between an individual and the layers of territorial governance through a system of membership rights and obligations (Ferrera 2003); they reflect patterns of collaboration and diversity or inter-group tensions; and are manifestations of ongoing state- and nation-building projects.

Second, the variation in the distribution of citizenship rights and obligations at and between different levels governance (Aron and Hofstadter 1974) may reveal unresolved issues of diversity management in a federation. Questions of primacy of federal citizenship over the subnational one, in matters such as citizenship acquisition (Shaw and Štiks 2010), taxation rates (Rosen 2002), and electoral rights (Schmid, Piccoli and Arrighi 2019) are not uncommon in potentially secessionist territories, where diversity accommodation takes place through territorial autonomy (e.g., Spain, the United Kingdom, Canada). Hence, while there are only a small number of post-

partition federations (Bosnia and Herzegovina, the Federal Republic of Yugoslavia and Russia are the most prominent examples), our discussion has broader implications for understanding the role of citizenship in multilevel states.

Our case-studies resemble a near perfect experimental setting: we focus on citizenship policies in two multilevel, federal states created as a result of the dissolution of socialist Yugoslavia (SFRY). This allows us to pursue two interrelated research avenues: (1) issues of continuity and change and (2) issues of inclusion and exclusion. We are interested in the extent to which the legacy of the multi-level citizenship policy of socialist Yugoslavia influenced citizenship policies in the post-Yugoslav states; and when, how and why we can see divergence in their citizenship regimes. Both post-partition federations have had the same previous experience of a multi-level citizenship regime in the socialist Yugoslavia. The federal citizenship legislation provided a framework for republican laws, but the republics as constituent units were responsible for the actual guarantee of citizenship rights. In this regard, Yugoslavia was not substantially different from other federal states, including the USA. The FRY and BiH adapted and followed the principles of socialist Yugoslavia in their citizenship legislation. Yet, the conflicts of the early 1990s, the modalities of break-up, and the subsequent processes of state- and nation-building, have all had a strong and distinct impact on the new states' citizenship regimes. The effects of the interplay of these different dynamics can best be seen in the political-legal dimension of citizenship, which deals with questions of formal *membership* and the associated *rights*; and in its normative-psychological dimension, where citizenship can be a tool for defining *belonging* in diverse societies through inclusion, openness, tolerance and acceptance, or be a contrivance for exclusion and ethnic engineering (Shaw and Štiks 2010, 12).

Conceiving of our analysis through the lenses of historical institutionalism,¹ we proceed by first setting the grounds for analysis by looking at the different aspects of citizenship in multilevel polities. This will set the stage for further analysis – looking at the important role of citizenship policy in political systems in which different ethnic groups claim territory as their historical homeland and engage consistently in state- and nation-building processes. In the following two sections, we look at the citizenship regimes in the FRY [Serbia-Montenegro 2003-2006] and BiH as federal states created by different kinds of ethnonational break-ups to explore to what extent the citizenship structures of the old multi-level state have been reflected in the new ones, what other elements the new citizenship policies contain and why. In so doing, we first look at continuities, distinguishing between (1) the shared institutional legacies common to all post-Yugoslav states and (2) specific structural replications of the old federal structure in those territories where ethnonational break-up remained incomplete. We then explore discontinuities in citizenship policies as a reflection of wider tensions between the processes of nation- and state-building (and destruction), as well as international influence in the Balkans. Our conclusions highlight that citizenship policies in newly independent states will reflect the vestiges of previous citizenship regimes, adjusted to the post-secession experiences, and the specific aims of those in charge of nation-building and state construction.

Citizenship as Membership in National and Multilevel Polities: Legacies and Linkages

Because it deals with a relationship between an individual and the state, the notion of citizenship is both reciprocal and multivalent (Linklater 1996; Miller 2000). It is reciprocal because it includes a constant exchange in the form of rights and duties of

membership. In return for giving legitimacy to governance by participating, individuals receive protection from the state's monopoly in the form of citizenship rights. In turn, they have the obligation to sustain and protect the state through the duties of citizenship such as taxation and law abidance. This reciprocity ensures the legitimate continuity of the state through the approval of citizens. The link represented by the notion of citizenship is also multivalent, as it includes not only matters of status and rights, but also those of belonging and loyalty. This latter dimension shapes the boundaries of citizenship because states adopt 'rules governing access to and control of scarce resources' (Shachar 2009, 32). Those rules are commonly based on the presumptions of belonging and loyalty and stipulated in laws regulating the status and rights of citizenship.

In other words, citizenship has multiple dimensions, commonly expressed as 'citizenship triads' (Schuck 2000; Joppke 2007; Bellamy 2004). First, it has a membership dimension constituted of the rules for inclusion and exclusion, based on the state and ethnic identities defined in the constitution. Second, citizenship has a political dimension, constituted and exercised through the rights and obligations of citizens vis-à-vis the state. Third, citizenship has a dimension of practices, articulating political identities, group consciousness and community.

The legislation defining the status of citizenship (nationality laws) has the purpose of ensuring continuity and conditions of membership. It regulates who is entitled to establish the link with the state *ab initio*, and who and under what conditions *may* be granted the possibility to establish such a link. In the former case, the entitlement to citizenship is commonly based on descent (*ius sanguinis*) or in some countries on birth on the country's territory (*ius soli*) (Aleinikoff and Klusmeyer 2002; see also Global Citizenship Observatory Databases 2017). In the latter, the possibility

for attaining citizenship is based on meeting the conditions that ensure the individual's commitment to the polity, such as residence, income, and acceptance of various symbolic and ideational elements of membership (e.g., flags, anthems, etc.).

Equally, laws defining the exercise and practices of membership regulate the rights and duties of citizenship, which, like the status of citizenship are exclusionary. That is, many of the rights and duties of citizenship become accessible to individuals once they reach a certain age or meet other conditions. Commonly, political rights (e.g., voting rights) are attainable once an individual becomes of age; military duty, where it still exists, is commonly related to individuals' age and (male) sex, although there are exceptions to this (e.g., Israel); taxation depends on an individual's economic position in society (e.g., employed/unemployed, possession of property or not, etc.).

The matters related to membership, rights and obligations of citizenship have occupied a central place in the post-communist states, where they have been commonly used as a tool of ethnic majorities to ensure their dominance in the state through the rules for inclusion and exclusion (Štikš 2006; 2016). The uneven distribution of the rights of membership that followed from the diversified citizenship statuses helped to reinforce 'constitutional nationalism' by creating a 'constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state' (Hayden 1992, 655).

However, the regulation of membership and rights in post-partition federations exhibits a different dynamic due to the interplay between federal citizenship and the citizenship of the sub-federal (and thus ethnically homogeneous) units. The relationship between these two layers of citizenship is best described through the notion of a 'citizenship constellation,' which Bauböck (2010, 848) defined as 'a structure in which individuals are simultaneously linked to several political entities, so that their legal

rights and duties are determined not only by one political authority, but by several.’ Multilevel polities are examples of a vertical ‘citizenship constellation,’ in which the determination of rights and duties takes place in hierarchically structured levels.

In the federal states created through ethnonational break-up, experiences of vertical citizenship constellations are not only related to their prior membership in multinational federations, but also to the way in which the new state has been conceived. Both in the domain of membership and that of the rights of citizenship, relationships between the federal state and the territorial unit define the rules for inclusion and exclusion. In the case of the post-Yugoslav federal states, while being essentially re-conceived after the state break-up, these relationships have been molded through the experiences of citizenship in the socialist federation, and the way in which state- and nation-building projects gave birth to new states. Continuities with the old federation can best be seen in the initial conception of membership regardless of whether the new federation was created through international intervention or not. However, the way in which these new states have been conceived and the degree of involvement of the international community in this process affected the replications of the old federal structure.

Continuity regarding the regulation of the status of membership is mirrored in the adoption of the two-tiered citizenship model in both the FRY and BiH. The two-tiered citizenship was, in both cases, conceived through the federal and the sub-federal levels - republican in the FRY and entity in BiH. While in principle the federal citizenship has legal primacy over the republican/entity one, in practice, in both cases the centrifugal tendencies of the sub-units challenge the primacy of the federal regulation of citizenship. A further replication of the old federal structure in both cases is the use of the (second-tier) republican citizenship instead of the zero-option to

regulate status in the initial determination of citizenship. The former conferred citizenship of the new state to those in possession of the *status of citizenship in one of its constituent republics*, while the latter would have included as members those *residing* in the respective republics at the time of creation of the new state.

Historical institutionalism can help explain this dynamic by emphasizing the importance of historical precedent for future policy directions (Steinmo 2012). Therefore, it is not surprising that the post-Yugoslav federations first looked at the experience and application of citizenship legislation in Yugoslavia, a state in which they were members for forty years and whose diversity and multinationalism shared many of the key features that influenced politics in Bosnia and the FRY. Finally, both the 1996 FRY Citizenship Act and the 1997 Law on Citizenship of BiH were applied retroactively, substantially later than the date of creation of the FRY (27 April 1992) and the independence of Bosnia and Herzegovina (6 April 1992). Yet, as a consequence of different modalities of break-up and creation of the new multilevel states, this retroactive application had opposite purposes. In the FRY, it had an exclusionary function because it sought to avoid admittance of the people who sought refuge in Serbia or in Montenegro from the wars of Yugoslav disintegration. In post-war BiH, the retroactive enforcement of citizenship law had the objective of preventing statelessness and enabling the return of refugees.

By contrast, because of different break-up trajectories and different degrees of international involvement in the creation of these two post-partition federal states, on the dimension of the rights and obligations of citizenship, we can see a departure from the socialist Yugoslav model. In BiH, rights were determined by the federal level and implemented by the republics. In the FRY, most of the citizenship rights were indeed determined at the federal level, and all but voting rights could be implemented on the

whole territory of the state. As will be discussed below, in BiH, the exercise of rights at the federal level is determined through a combination of entity citizenship and ethnic belonging. Such a link between the sources and the distribution of the rights of citizenship is counterintuitive to the logic commonly applied in other federal states. In most federal states, the rights of citizenship are derived both ‘top-down’ and ‘bottom up.’ The encompassing polity (i.e. the federation) is the access point for citizenship status and rights, which are then distributed to subnational polities. Some exceptions from this general definition exist, such as those in Austria and Germany, where federal units have some discretion in controlling migrants’ access to citizenship; or in Switzerland, where cantonal and municipal citizenships give rise to the federal citizenship (Bauböck 2007). Even in these cases, the power of territorial units is derived from legislation at the federal level, unlike in the case of BiH where the source of status and rights are the entities rather than the federal state.

Such a conception of citizenship, marked by a strong discrepancy between the sources and distribution of citizenship rights, is the product of the interplay of two factors: 1) the war in Bosnia, which introduced ethnically homogenous territorial units as a result of widespread ethnic cleansing (Keil 2013); and 2) engagement of international actors in constitutionalizing the Bosnian state. The territorialization of ethnicity laid the foundations of Bosnia’s current federal political system, and was crucial for the development of its citizenship policies. Yet, the arrangement of relations between these territorial units within this multi-level federation took place in a framework moderated by the international community. Hence, the importance of the ways in which secession occurred and the modalities of creating the new state cannot be overstated. Both constitute critical junctures ‘during which there is a *substantially* heightened probability that agents’ choices will affect the outcome of interest’ in

shaping the governance of citizenship (Capoccia and Keleman 2007, 348, emphasis in original).

The Roots of Continuity and Discontinuity: Citizenship Experience in the Socialist Federation

An understanding of the institutional context that preceded the newly established federations is indispensable for identifying continuity and discontinuity in the citizenship policies of post-partition states. It is the basis for ascertaining the persisting legacies in new states, but also for identifying where new policies and institutions replicate centrifugal tensions that existed between the core and the seceding state.

For BiH and the FRY, both were constituted through the process of Yugoslav disintegration, and this entailed experiences of multilevel citizenship governance in the Yugoslav federal state.² Created after the Second World War, the Yugoslav federal model was unique, as it combined communist rule with genuine decentralization (after 1960) and the relatively far-reaching autonomy of the different sub-units (Dunn 1975; Ramet 1992). Moreover, the decentralized Yugoslav federation recognized different membership categories, including ‘nations,’ ‘nationalities’ and ‘ethnic groups’ (Lendvai and Parcell 1991). These statuses co-existed at the federal and the republican levels, but did not necessarily coincide or overlap. The Yugoslav concept of ‘nations’ designated the majority ethnic community that inhabited the territory of a particular republic; ‘nationalities’ included minorities with kin-states outside of Yugoslavia (e.g., Bulgarians, Albanians); while ‘ethnic groups’ denoted communities without a kin-state. The changing relationships between the republics as territorial-political units and the

different citizenship statuses were central to the evolution of the ‘citizenship constellation’ of the socialist Yugoslavia. Its core legacies - the question of ‘ownership’ over sub-national units and centrifugal drives – permeated the citizenship regimes of the Yugoslav successor states.

The relationship between territory and ethnic communities was at the core of the Yugoslav federation, and central to constituting its multilevel citizenship regime. The 1946 Constitution officially recognized five nations as ‘titular’ for five out of six of its republics – Croats in Croatia; Macedonians in Macedonia; Montenegrins in Montenegro; Serbs in Serbia; and Slovenians in Slovenia.³ Bosnia and Herzegovina was the only former Yugoslav republic that remained without a titular nation, meaning that Bosnia was the only Republic not associated with one dominant ethnic group. With the constitutional amendments of 1968, Muslims (written with a capital ‘M’ to distinguish the ethnic from the religious community) were granted the status of a titular nation at the federal level but not in any of Yugoslavia’s constituent republics. This caused a major discrepancy in terms of relationship between ethnic communities and different levels of territorial governance. citizenship of the federal state was formally constituted by the people (and thus nations, nationalities, etc.), while at the republican level the same federal citizenship was the outcome of the coming together of sub-units ‘owned’ by their respective ethnic communities. This interplay of state construction and ownership left an important mark on the constitutional set-ups of the two post-Yugoslav federations. These exhibit continuity of the question of the discrepant constitution of citizenry at different state levels when the state was created ‘regionally’ (by agreement between republics, as was the case in the FRY) and discontinuity, when its creation was mediated internationally (as was the case with BiH).

Further to the question of ‘ownership’ at different state levels, another characteristic of the Yugoslav federal citizenship has been a continuous redefinition of the relationship between the central and sub-national levels. From 1945 until its dissolution in 1991, the SFRY adopted four federal citizenship acts (1945; 1950; 1964; 1976), and the respective Republics changed their regulation of membership as many times. The evolution of the two-tiers of citizenship regulation in the former Yugoslavia was the outcome of progressive decentralization, which had as its result the strengthening of republican citizenship vis-à-vis the federal one.

The ultimate result of this process has been the issue of precedence, a socialist legacy that was markedly pronounced in the citizenship regimes of both post-Yugoslav federations. This issue, however, developed gradually. The 1945 Citizenship Act automatically created a vertically nested ‘citizenship constellation,’ where each citizen of the federation was simultaneously a citizen of one of its constituent republics (arts. 28-34). The subsequent republican citizenship acts were virtually identical, and reiterated the federal citizenship provisions. Such a relationship between the federal and the republican citizenship was retained in the federal citizenship acts of 1950 and 1964. The precedence of the federal citizenship was thus clear, and membership in the constituent republics was conditional upon the status of being a Yugoslav citizen.

Constitutional and socio-political changes that took place in Yugoslavia in the mid-1970s, however, triggered the issue of how tightly the ‘citizenship constellation’ was coupled (Cohen 1993; Dunn 1975; Štiks 2015). The 1976 Citizenship Acts adopted at different levels of governance reflected the strengthening of the republics vis-à-vis the Yugoslav federation. Ostensibly, the 1976 federal Citizenship Act would read similar to its three predecessors in terms of the general norms determining and regulating status, such as the dominance of *ius sanguinis* and the prohibition of dual

citizenship among republics. In practice, however, this law significantly loosened the links between the two tiers of citizenship; above all, by establishing the Federal Citizenship Register. Despite its denomination as ‘federal,’ the maintenance of the Citizenship Register was a competence of the authorities of the constituent republics. Hence, the implementation of citizenship rules became practically transferred to the republican level, despite the legal precedence of the federal laws. This issue was further complicated by the fact that, unlike the earlier laws, the republican citizenship acts were neither adopted simultaneously, nor were they completely identical (Štikš 2015).

The question of ‘who constitutes the state and at what level’ and the lack of clear primacy of federal citizenship over the republican one had a major implication for the new states. It blocked ‘zero solutions’ in the initial determination of citizenship after the break-up, thus serving as a major tool for inclusion and exclusion. This means that the new states did not immediately recognize all those present in their territory as their citizens, but rather those possessing the ‘formal’ citizenship of the respective republics. Unlike the former Soviet Republics, the post-Yugoslav states determined their post-independence membership on grounds of the republics’ Registers of Citizens (Štikš 2006). Due to poor administration of such registers, individuals who spent decades in a Republic other than that of their citizenship, were at a high risk of statelessness at the time of the Yugoslav disintegration. For instance, if an individual had Croatian republican citizenship, but permanently lived in Serbia, he or she would be entered in the Croatian Citizenship Register. Despite living in Serbia at the time of break-up, the person would not be entitled to the country’s citizenship due to the absence of the ‘zero solution’. Elements of this particular legacy can be well traced in the regulation of citizenship in the FRY. Both the establishment of the new federation, as well as its final

break-up left significant numbers of people in Serbia and in Montenegro without a status of citizenship (Rava 2010).

Fragmentation of Citizenship in the FRY

Continuities and discontinuities in the regulation of citizenship take up different forms when break-ups of multilevel polities result in federations that persist over time, and when they fragment further into ethnically homogenous unitary states. The former is the case in BiH, as well as in the multinational federal states that have been created through independence from British colonial rule. The completion of ethnonational break-up, as has happened in the FRY, is more common, certainly within the post-socialist world, where several unrecognized statelets symbolize the demands for recognition and further ethnonational division in countries such as Georgia, Azerbaijan and Moldova (Caspersen 2011). The FRY is thus an example of a post-partition federation, which eventually withered away. Its citizenship regime was marked by continuity of multilevel regulation of membership that existed in the former Yugoslavia; a regulation that eventually replicated the question of ‘ownership’ and ‘primacy’. Yet, the modalities of break-up, the evolution of secessionism in sub-national territorial units, and broader international influences have caused several disconnects between the citizenship regime of the FRY and that of its predecessor. As a result, the entangled questions of belonging and citizenship governance proved to be central to both sustaining and fragmenting the FRY.

The de-coupling of the old socialist Yugoslav citizenship and the re-coupling of the citizenship policies of Serbia and Montenegro in a new federation was central to the lack of clarity in defining who ‘belongs.’ The constitution of 27 April 1992,

stipulated that a separate federal law would be adopted to regulate membership in the newly established state. Nonetheless, such a law was not adopted until mid-1996, which was a clear effect of the wars that followed the Yugoslav break-up in Croatia and BiH.

The four-year delay in the formulation of citizenship legislation, coupled with the vagueness of the constitutional provision, allowed the policy-makers in the FRY a 'greater margin of maneuver when it comes to ethnicity and citizenship, which were particularly malleable at the time of ethnic conflicts' (Džankić 2010, 8). The aim of such a delay was twofold. First, according to Štiks (2006), the deliberate manipulation of citizenship supported Milošević's 'ethnic engineering,' a policy through which ethnic Serbs who fled the wars in Croatia and BiH were resettled in specific geographic locations within the FRY. The objective of 'ethnic engineering' through citizenship was to increase the number of ethnic Serbs in areas such as Vojvodina, Kosovo, and southern Montenegro, areas of the FRY that were inhabited by ethnic minorities, such as Hungarians, Albanians or Croats. Second, the delay in adopting the separate federal citizenship law enabled the FRY policymakers to fuel the wartime activities by providing manpower to the Army of the Republika Srpska in BiH. The FRY authorities forcibly mobilized the males who fled from the conflicts in Croatia and Bosnia and Herzegovina (European Civic Forum 1994). This was only possible because of the undefined citizenship in the FRY, which allowed discretion in treating such individuals as refugees, internally displaced persons, foreigners or citizens. Hence, the initial lack of clarity in terms of 'ownership' powered new forms of exclusion and discrimination, which sustained the nationalist objectives of the FRY elites in the early 1990s; that is, they sustained the FRY itself.

How central the unclear 'citizenship constellation' to sustaining the FRY was is best seen by looking at the continuity of the issues of 'ownership' and 'primacy'

since the adoption of the 1996 federal citizenship law. The federal citizenship had absolute legal primacy over the republican level, an obvious path dependency from the socialist legislation. However, the definition of the ‘people’ was based on republican laws from the 1970s, which points to a discrepancy in the construction of membership. As mentioned previously, the 1996 federal citizenship law was applied retroactively. At the same time, membership in the federal state was determined on grounds of the registered republican citizenship of Serbia and of Montenegro. In addition to exposing a number of intra-Yugoslav migrants to the risk of statelessness (Krasniqi and Stjepanović 2015; Djordjevic 2015), the reliance on the imperfect republican-level citizenship registers for the construction of membership in the new federation created a mismatch between the individuals who actually resided in the FRY territory and those who were formally registered as its citizens. This clash of different citizenship legislation frameworks became the key feature of the relationship between the FRY as the core, and Serbia and Montenegro as its constituents.

The disjoint between the two levels of citizenship in the FRY became pronounced after 1997, when the Montenegrin ruling elite started to detach from Milošević’s politics, and to gradually move towards independence. This significantly altered the relationship between the federal citizenship and the citizenship of sub-national territorial units. Until 2004, the 1996 FRY citizenship law was still implemented in Serbia, along with the 1976 Serbian Citizenship Act. In Montenegro, the federal citizenship legislation ceased to have effect with the entry into force of the 1999 Montenegrin Citizenship Act. In 2004, Serbia changed its citizenship law, guaranteeing legal continuity of Serbian citizenship within the new State Union with that of the FRY (Rava 2010). With the adoption of the 2004 Serbian citizenship legislation, the 1996 FRY Citizenship Law ceased to be implemented in both members

of the State Union of Serbia and Montenegro. The persistence of questions of ‘who belongs’ and of ‘primacy’ that marked these citizenship policies point to a continuity with the old socialist citizenship regime. However, the divergent approaches of the territorial units clearly reflect discontinuity: while decentralized, the citizenship policy among the former Yugoslav republics was not internally conflicting.

By contrast, the Law on Montenegrin Citizenship, enacted on 1 November 1999, is a clear example of how legislative measures were used to detach competences from the federal level and how citizenship policies were pivotal for the arithmetic of voting. Even though federal citizenship policy had legal primacy, the 1999 Law on Montenegrin Citizenship allowed the acquisition of republican citizenship without the prior or simultaneous acquisition of the federal one. Since the federal legislation did not provide for the possibility of membership in a territorial unit without federal membership, the laws were clearly in conflict. The FRY authorities, however, did not exclude individuals who obtained the citizenship of Montenegro in line with the 1999 Law on Montenegrin Citizenship. Since membership in the federation was constituted by membership in the constituent republics, the adoption of this law had a paradoxical effect. Despite the decoupling of Montenegrin citizenship from the federal level, from the perspective of the FRY, the two remained tightly coupled.

The cutout of Montenegro’s citizenship policy had a dual function. First, it was used as a mechanism of nation-building by focusing on Montenegrin as a distinct and separate identity from the Serbian one (Morisson 2009; Džankić 2014). Second, it became a tool for state-building, by means of undermining the authority of the FRY and seeking conflict with both Serbia and the FRY to enhance the autonomy and competences of Montenegrin institutions.

The relationship between the federal and the republican citizenships in the FRY and Serbia and Montenegro is indicative of how political developments can shape and transform the notion of membership in territories where the multilevel state is fragile. Originally, the FRY was a tightly coupled federation, in which the political and legislative processes at the federal and republican levels converged. The protraction in the adoption of the federal citizenship legislation was therefore not an illustration of the competition between the two levels of the polity. Rather, it has been an indicator of the high degree of their nestedness. This, however, could not have the same effect when the subnational units were no longer tightly coupled. While established in Article 7 of the Constitutional Charter, citizenship of Serbia and Montenegro - the successor to the FRY - was never formally constituted through a separate federal law. Rather, centrifugal tendencies in the subnational citizenship of Montenegro have been used as a form of resistance to the centralizing forces at the federal level, and the centripetal ones in Serbia as a mechanism of strengthening the central state. Hence, the conflicting approaches of Serbia and Montenegro vis-à-vis the FRY citizenship model highlight how critical membership paradoxes are when post-partition federations become unsustainable.

Keeping it All Together: Imposition and Ethnic Exclusion in Bosnian Citizenship

In contrast to the FRY, Bosnia and Herzegovina is an existent post-partition federation, established by the 1995 Dayton Peace Agreement (DPA), which ended the 3.5-year long war in the country. Bosnia's system has been characterized as one of 'imposed federalism,' introduced by international actors to end the conflict and protect the territorial integrity of the country (Keil 2013, 131). The different territories in Bosnia (entities and cantons) did not come together voluntarily, but were the result of different

conflicts, ethnic cleansing campaigns and international intervention in Bosnia (Keil 2012).⁴ The war was characterized by centrifugal tendencies and the aims of Croat and Serb elites in Bosnia were to divide the country and unite territory under their control with the respective kin-states. This background is important, because the mediation of centrifugalism through international intervention has significantly shaped the federal elements of the country's citizenship regime (Keil and Perry 2015).

The citizenship architecture of BiH has been established through Annex IV of the DPA, and the 1997 citizenship law. The 1999 Law on Citizenship of Bosnia and Herzegovina, which provided a more comprehensive set of regulations on the acquisition and loss of citizenship, clearly reflected the significance of break-up modalities and international influence for the initial determination of citizenship. Similar to the case of the FRY, the citizenship legislation was applied retrospectively. The logic of the retrospective provision in Bosnia was however different for the initial determination of citizenry from that of the FRY. In the latter case, it was a mechanism of exclusion of those who sought refuge in Serbia and Montenegro. In Bosnia, granting citizenship to all those who had been included in the republican registry of citizens in 1992 was done to (1) ensure that refugees who had left the country during the war could return and claim citizenship rights, as well as (2) an attempt to undo the consequences of ethnic cleansing. Citizens were allowed, and after 1999 strongly encouraged by the international community, to return to their pre-war homes, claim any lost property and exercise their citizenship rights (Sarajlić 2010). While this policy has had some success, overall, Bosnia remains an ethnically divided society, in which the majority of territory is dominated and controlled by one of the three constituent peoples (Bosniaks, Serbs and Croats) (Toal and Dahlmann 2011).

Beyond this issue of the initial determination of citizenry, the structure of the current citizenship regime of Bosnia and Herzegovina is complicated and, in many respects, unique (Sarajlić 2010). The clearest continuity with the citizenship regime of socialist Yugoslavia is the two-tiered citizenship model, again reflecting the question of ‘primacy.’ The continuity of the substance of the relationship between the federal and subnational citizenships is far less so. Article I.7 (e) of the Bosnian Constitution states that the entities and the institutions of Bosnia and Herzegovina can award Bosnian citizenship. The Constitution also outlines that the citizenship of Bosnia and Herzegovina is linked to citizenship of one of the entities. Yet this link remains unclear, as neither the Constitution nor the 1999 Law on Citizenship of Bosnia and Herzegovina establish clear prevalence of either federal or entity legislation. No legal provision in the Bosnian legislation conditions the status of a citizen of Bosnia and Herzegovina on a prior status of an entity citizen, but article 27 of the 1999 Law does so indirectly by a loss clause: losing entity citizenship would lead to an automatic loss of the citizenship of Bosnia and Herzegovina. In this context, the precedence of federal over entity citizenship would be a clear indicator of continuity with the citizenship policies of socialist Yugoslavia, while primacy of subnational legislation would point to a strong discontinuity as was the case of Montenegro in the FRY.

In practice, entities administer and have the final say in awarding (and revoking) citizenship. The contents of the entity citizenship laws resemble those of independent states, but in most aspects are aligned with the 1999 Law. As a result, Bosnia’s system has been characterized as a form of *fractured citizenship*, where the ‘the state citizenship of Bosnia and Herzegovina is largely emblematic, [and] those of the entities are the ones that are administratively functional’ (Džankić 2015, 75). This is significant, because the entities continue to define themselves in ethnic terms, and in such a context

pronounced questions of 'primacy' in the administrative domain would destabilize the state. This approach has been taken also by the Constitutional Court ruling of July 2000 (U-5/98), which highlighted that 'territorial division cannot serve as a constitutional legitimacy for ethnic domination, national homogenization or the right to maintain results of ethnic cleansing.' The subsequent changes to the entity constitutions prevented the FBiH and the RS from referring to selected ethnic groups as their main inhabitants (i.e. RS as the state of Serbs in Bosnia) thus preventing the dominance of a single ethnically defined unit in the federal state.

Even so, the citizenship regime of Bosnia and Herzegovina is characterized by strong centrifugal tendencies, particularly as regards the symbolic and ideational elements. Symbols highlight the lack of common bond among Bosnia's constituent peoples, and demonstrate an intense affiliation of ethnic communities with their neighbouring kin states. For example, the use of the Cyrillic alphabet continues to be dominant and exclusive in many parts of the RS, despite the abovementioned Constitutional Court ruling of July 2000 (U-5/98), which has ordered the RS to make all three languages (Bosnian, Croatian and Serbian) official. In the RS, the use of the Serbian flag is widespread, while the Croat flag is visible all across the Croat cantons.

Holding a dual nationality of Serbia or Croatia is tolerated in Bosnia and Herzegovina yet not explicitly allowed. Hence, obtaining a passport of Serbia or Croatia through ancestry or kinship is a symbolic gesture at the individual level, but it is also an indicator of the disjointed nature of Bosnia's citizenship and a lack of political and social integration of the country.

Adopted against a backdrop of a major ethno-territorial conflict and heavily influenced by the international factors, the Bosnian citizenship regime has had uneven effects on citizenship rights of the different ethnic groups. That is, holding Bosnian

citizenship does not mean the same rights for all Bosnian citizens. In day-to-day political practice, ethnicity remains an important feature of the country's citizenship constellation, while ethnic criteria play an important role in the composition of institutions. Reflecting the externally shaped 'ownership' of the state and the entities by different communities, only members of the three constituent peoples – Bosniaks, Croats and Serbs – can become members of Bosnia's Presidency and the House of Peoples at the federal level. This is discriminatory and exclusionary towards minority ethnic communities (defined as 'Others'), but has been considered the building block of the Bosnian citizenship regime aimed at preserving the power balance among the constituent peoples. The strength of the question of 'ownership' – defined both at the state and at entity levels – is best seen in the decade-long deadlock over constitutional reform (Stojanović and Hodžić 2015). *Sejdić and Finci vs. Bosnia and Herzegovina* (27996/06 and 34836/06) and further judgements of the ECtHR on similar cases, have clearly established that constitutional provisions precluding non-constituent peoples from exercising citizenship rights are a form of discrimination and that as such they constitute a violation of European Convention of Human Rights (ECtHR 2009). Implementing the Court's rulings would have significant implications for the existing power-sharing arrangements. It would re-shape the citizenship regime of BiH by re-distributing powers and competences 1) among the constituent peoples and 2) between constituent peoples and those who do not belong to them. As a result, despite the substantive efforts by the European Union (EU) and the Venice Commission of the Council of Europe, 'ownership' established through the DPA remains the central constitutive pillar of Bosnia's citizenship governance.

Conclusion

While the incomplete ethnonational break-ups presented in the two cases in this article are rare, they nevertheless tell us some wider stories about the trajectories of citizenship in post-secession territories. The cases of the FRY and BiH indicate that the interplay between institutional legacies and replicated federal structures can have different outcomes in cases of ‘voluntary’ and ‘involuntary’ post-partition federations, and how they can break states apart or join their constituents together. Our analysis shows how citizenship regimes in countries that have seceded from federal and other multi-level systems will engage in complex formulations of their citizenship regimes. These processes will include a mix of historical continuities— i.e. incorporating elements of the previous federal/multi-level citizenship regime and connecting it with new elements of ethnic engineering and state-building. Similar trajectories can be observed in other secessionist territories as well (Arrighi and Stjepanović 2019; Bauböck 2019; Caspersen, 2011, 76-101; Malyarenko and Wolff 2019, 30-43; Owtram, 2019).

Our case studies of the FRY and BiH have first highlighted that the heritage of the ‘mother’ state has an important role in constituting the new polity at the time of independence. The newly established states followed many of the political and legal frameworks provided by the SFRY in the design of their own citizenship legislation. We can therefore identify a number of historical continuities, such as the vertical citizenship constellation that both the FRY and BiH adopted, as well as the continued interplay of territorial unit and federal citizenship provisions in terms of legal framework and implementation obligations. However, there are also a number of important differences, such as the much stricter focus on who belongs to the state (exemplified by the FRY law of 1996) and who has which rights in which territory of the country (the case of direct and indirect voting rights in Bosnia). This points to the

conclusion that while historical legacies matter, critical junctures decisively affect the regulation of important policy fields such as citizenship legislation.

Both successor federations of the SFRY have used a two-tier citizenship framework in order to organize citizenship. Nonetheless, while the SFRY had a relatively clear and coherent framework (at least until 1970), the same cannot be said for its successor states. The FRY waited until 1996, before it implemented a law, and after 1997 Montenegro began to divert from this joint legislation. This eventually resulted in a separate Montenegrin Law in 1999, which contradicted the federal citizenship legislation. Here, the attempts of defining the nation are clearly visible, both in the strict rules of the 1996 FRY act, and in the 1999 Montenegrin Citizenship Act, which also focused on laying the groundwork of an independent Montenegrin identity (and state). Likewise, the citizenship provisions in Bosnia do not clearly define who can award citizenship and which rights and obligations are connected to it. While the entities play a major role, according to the constitution, the institutions of Bosnia and Herzegovina can also award Bosnian citizenship. It is not clear how this provision would link Bosnian and entity citizenship, or which Bosnian institutions could award citizenship. Additionally, Bosnia's provisions exclude certain members of the population (including those having Bosnian citizenship) from active and passive voting rights, because membership entitlements are exclusively connected to self-identification with one of the three constituent peoples. The above-mentioned focus on nation-building and creating ethnically homogenous entities (and cantons) is visible in these provisions. In both cases, radical breaks with the past can be observed in light of ethnic conflict and secession. However, historical legacies, even if re-framed by wars, and nation- and state-building processes are still firmly engrained in institutional and policy choices. This is clearly the case in the FRY, but also to an important degree in

Bosnia, a country that saw its post-war institutional framework mainly written by external actors.

The two post-partition federations studied in this article show how fragile the social contract can be in multilevel states that struggle to accommodate diversity. Such states might effectively be formally constituted as federal, at least in terms of the normative dimension of federalism (Burgess 2012). Yet they may display no commitment to federal values. If the core question of ‘who belongs’ remains unanswered and if there is disagreement over who defines the state and how, citizenship policies can serve different purposes. They can be the tools that ultimately dismantle the fragile state, or they can become the glue that can keep even a dysfunctional state in one piece. In this regard, citizenship design is an important element in federal state-building. Historical continuities and critical junctures in the choice of citizenship policy frameworks tell us a wider story about membership not only in post-secession territories and states, but also in other post-conflict federations that struggle with finding the right balance between accommodating diversity and keeping the state together. Trajectories and pathways that the cases of FRY and BiH have revealed, could serve as useful analytical lenses for other new federal models that have evolved out of ethnic conflict, such as Ethiopia, Iraq or Nepal.

REFERENCES:

- Aleinikoff, T. A., and D. Klusmeyer, eds. 2012. *Citizenship policies for an age of migration*. Washington, DC: Carnegie Endowment.
- Aron, R., and D. Hofstadter. 1974. Is Multinational Citizenship Possible? *Social Research* 41 (4): 638-546.
- Arrighi, J. T., and D. Stjepanović. 2019. Introduction: The rescaling of territory and citizenship in Europe. *Ethnopolitics* 18 (3): 219-226.
- Bauböck, R. 2007. Political boundaries in a multilevel democracy. In *Identities, Affiliations and Allegiances* ed. S. Benhabib and I. Shapiro, 85-112. New York: Cambridge University Press.
- Bauböck, R. 2010. Studying citizenship constellations. *Journal of ethnic and migration studies*, 36 (5): 847-859.
- Bauböck, R. 2019. A multilevel theory of democratic secession. *Ethnopolitics*, 18 (3): 227-246.
- Bellamy, R., D. Castiglione, and E. Santoro. 2004. *Lineages of European citizenship: rights, belonging and participation in eleven nation-states*. New York: Springer.
- Bieber, F. 2006. *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, New York: Palgrave MacMillan.
- Brubaker, R. 1996. *Nationalism reframed: Nationhood and the national question in the new Europe*. Cambridge: Cambridge University Press.
- Burgess, M. 2012. *In Search of the Federal Spirit – New Theoretical and Empirical Perspectives in Comparative Federalism*, Oxford: Oxford University Press.

- Burgess, M. 2006. *Comparative Federalism – Theory and Practice*, New York: Routledge.
- Capoccia, G. and R.D. Kelemen 2007. The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Materialism. *World Politics*, 59 (3): 341-369.
- Caspersen, N. 2011. *Unrecognized States: The Struggle for Sovereignty in the Modern International System*. London: Polity Press.
- Cohen, L. J. 1993. *Broken bonds: the disintegration of Yugoslavia*. Westview Press.
- Dunn, W.N. 1975. Communal Federalism: Dialectics of Decentralization in Socialist Yugoslavia. *Publius: The Journal of Federalism*, 5 (2): 127-150.
- Džankić, J. 2010. *Transformations of Citizenship in Montenegro: a context-generated evolution of citizenship policies*. CITSEE Working Paper 2010/03. University of Edinburgh.
- Džankić, J. .2012. Understanding Montenegrin citizenship. *Citizenship Studies*, 16 (3-4): 337-351.
- Džankić, J. 2015. *Citizenship in Bosnia and Herzegovina, Macedonia and Montenegro: effects of statehood and identity challenges*. Ashgate Publishing, Ltd.
- Elazar, D. 1982. *Exploring Federalism*, Tuscaloosa: University of Alabama Press.
- Ferrera, M. 2003. European Integration and National Social Citizenship: Changing Boundaries, New Structuring?. *Comparative Political Studies*, 36 (6): 611-652.
- Forsyth, M. 1981. *Union of States: The Theory and Practice of Confederation*, Leicester: Leicester University Press.

- Grgić, G. 2017. *Ethnic Conflict in Asymmetric Federations – Comparative Experience of the Former Soviet and Yugoslav Regions*. New York: Routledge.
- Hayden, R. M. 1992. Constitutional nationalism in the formerly Yugoslav republics. *Slavic review*, 51 (4): 654-673.
- Heinemann-Grüder, A. ed. 2002. *Federalism Doomed? European Federalism between Integration and Separation*. New York: Berghahn Books.
- Horowitz, D. 2003. The Cracked Foundations of the Right to Secede. *Journal of Democracy*, 14, 5-17.
- Jackson, V. 2001. Citizenship and Federalism. In *Citizenship Today – Global Perspectives and Practices* ed. A. Alenikoff and D. Klusmeyer. 127-183. Washington D.C. Carnegie Endowment for International Peace.
- Joppke, C. 2003. Citizenship between de- and re-ethnicization. *European Journal of Sociology/Archives Européennes de Sociologie*, 44 (3): 429-458.
- Joppke, C. 2007. Transformation of citizenship: status, rights, identity. *Citizenship Studies*, 11 (1): 37-48.
- Keil, S. 2013. *Multinational Federalism in Bosnia and Herzegovina*, Abingdon and Burlington: Ashgate.
- Keil, S. 2012. Federalism as a Tool of Conflict Resolution: The Case of Bosnia and Herzegovina. *L'Europe en Formation*, 54: 205-218.
- Keil, S. and V. Perry, ed. 2015. *State-Building and Democratization in Bosnia and Herzegovina*, Abingdon and Burlington: Ashgate.
- Kincaid, J. 1999. Confederal federalism and citizen representation in the European Union, *West European Politics*, 22 (2): 34-58

- Lendvai, P. and L. Parcell 1991. Yugoslavia without yugoslavs: the roots of the crisis. *International Affairs* 67 (2): 251-261.
- Linklater, A. 1996. Citizenship and sovereignty in the post-Westphalian state. *European Journal of International Relations*, 2 (1): 77-103.
- Malyarenko, T. and S. Wolff. 2019. *The Dynamics of Emerging De-Facto States – Eastern Ukraine in the Post-Soviet Space*. New York: Routledge.
- Maas, W. ed. 2013. *Multilevel Citizenship*. Philadelphia: University of Pennsylvania Press.
- Miller, D. 2000. *Citizenship and national identity* Polity: Cambridge.
- Morrison, K. 2009. *Montenegro. A Modern History*, New York, IB Tauris.
- Owtran, F. 2019. From Shotgun Marriage to Amicable Divorce? The Kurdistan Region of Iraq: Self-Determination, Secession and Recognition in Comparative Perspective. In *Federalism, Secession, and International Recognition Regime – Iraqi Kurdistan* ed. A. Danilovich: 72-89. New York: Routledge.
- Pierson, P. 1993. When Effect Becomes Cause: Policy Feedback and Political Change. *World Politics*, 45 (4): 595-628.
- Ramet, S. P. 1992. *Nationalism and Federalism in Yugoslavia 1962-1991*, Bloomington: Indiana University Press.
- Rava, N. 2010. Serbia: elusive citizenship in an elusive nation-state. *CITSEE Working Paper 2010/08*. University of Edinburgh
- Rosen, M. 2002. Extraterritoriality and Political Heterogeneity in American Federalism. *University of Pennsylvania Law Review*, 150 (3): 855-972

Schmid, S. D., L. Piccoli and J.T. Arrighi 2019. Non-universal suffrage: measuring electoral inclusion in contemporary democracies. *European Political Science*, 18 (4): 695-713.

Schuck, P. 2000. Citizenship in Federal Systems. *The American Journal of Comparative Law*, 48 (2): 195-226.

Shaw, J. and I. Štiks, 2010. The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia: An Introduction, *CITSEE Working Paper 2010/01*, Edinburgh.

Steinmo, S. 2012. Historical Institutionalism. In *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* ed. D. Della Porta and M. Keating , 118-138. New York: Cambridge University Press.

Štiks, I. 2015. *Nations and Citizens in Yugoslavia and the Post-Yugoslav States*, New York: Bloomsbury.

Štiks, I. 2006. Nationality and Citizenship in the Former Yugoslavia: From Disintegration to European Integration. *Southeast European and Black Sea Studies*, 6 (4): 483-500.

Stojanović, N., and E. Hodžić 2015. Introduction: Ethnocracy at the Heart of Europe. *Ethnopolitics*, 14 (4): 382-389.

Thelen, K. 1999. Historical Institutionalism in Comparative Politics. *Annual Review of Political Science*, 2: 369-404.

Toal, G., and C. Dahlmann 2011. *Bosnia Remade – Ethnic Cleansing and Its Reversal*, New York: Oxford University Press.

Verdery, K. 1998. Transnationalism, nationalism, citizenship, and property: Eastern Europe since 1989. *American Ethnologist*, 25 (2): 291-306.

Watts, R. 1999. *Comparing Federal Systems*, 2nd ed., Kingston and Montreal: McGill Queen's University Press.

NOTES:

The authors are grateful to Prof. Rainer Bauböck for comments on an early draft of this paper, and thankful for the feedback of two anonymous reviewers and the journal editor.

¹ Historical institutionalism is an approach in the study of politics, which assesses the decisions and non-decisions of certain actors, and their consequences in a historical perspective. It is argued that historical context is important to understand decisions, actors furthermore “learn” from history and historical decisions lead to certain expectations of actors (Pierson 1993; Thelen 1999; Steinmo 2012). Historical institutionalists argue that change happens slowly and evolves over time, but that in certain situations of crises, so called critical junctures, substantial policy and institutional change is possible, which has long-lasting effects (Capoccia and Kelemen 2007).

² From its establishment in 1918 until the Second World War, Yugoslavia was a unitary country. After the Second World War, it was reconstituted as a federal state consisting of six Republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro Serbia, and Slovenia) and two autonomous provinces of Serbia (Vojvodina, and from 1963, also Kosovo, which had previously had the status of an autonomous district, which meant less autonomous powers than Vojvodina).

³ By recognising Montenegro and Macedonia the 1946 Yugoslav Constitution went already further than the previous Constitution of Royal Yugoslavia, which only recognised Serbs, Croats and Slovenes.

⁴ Bosnia and Herzegovina consists of two entities, the Republika Sprska (RS), which is mainly inhabited by Serbs, and the Federation of Bosnia and Herzegovina (FBiH), which is mainly inhabited by Bosniaks and Croats. The FBiH is further divided in ten cantons, five with a Bosniak majority, three with a Croat majority and two mixed cantons. For more on the organisation of the political system see Keil 2013, 95-124; Bieber 2006.