

4 Peace processes and path dependence

Institutionalizing ethnic division in Bosnia

Lise Morjé Howard

Bosnia represents one of the most important examples of international statebuilding. An international coalition of interested governments, international organizations, and NGOs came together in an unprecedented way to assist Bosnia's elites in constructing new state institutions.¹ Most of the literature on Bosnia analyzes the causes of the war and how the international community responded to the violence that took place in the former Yugoslavia roughly from 1992 to 1995.² Since statebuilding efforts in Bosnia have had some 15 years to yield fruit, recent research has explored the effects, both positive and negative, of statebuilding efforts in this Balkan country.³ In terms of statebuilding, Bosnia is a good example of both a "model to emulate and to avoid, of how international intentions and ideas go awry, and yield unintentional and even negative outcomes."⁴ In other words, sometimes democratically minded, well intentioned statebuilders can find themselves supporting principles and policies that are, in fact, not democratic and are at odds with their intentions and goals. The presence of many actors, who often have different priorities and must contend with their own constituencies, is, thus, likely to have a profound impact on how statebuilding is executed.

This chapter examines how the broad coalition of international actors that came to lead statebuilding efforts in Bosnia ended up supporting rigid ethnic group rights. This outcome is particularly puzzling because adhering to such principles leads to the institutionalization of states that are divided along rigid ethnic lines, paralyzed by reified ethnic animosity, and are generally incapable of being governed without significant external assistance. That is to say, in spite of statebuilders' pursuit of peace and democracy, they instead fostered negative peace and the creation of an "ethnocracy."⁵ Why? And how does this question relate to this volume's interest in coalitional behavior and the challenges multiple actors encounter as they engage in statebuilding? I answer these questions by focusing on the events and "critical junctures" that took place before and during the Dayton peace negotiations, which undergirded the Bosnian statebuilding process.

The chapter first provides an overview of path-dependent explanations and critical junctures. It then explores the circumstances under which the war in Bosnia ended, demonstrating a gradual narrowing of the options for the peace

accord, with one central, early principle that led – in a path-dependent manner – to the final Dayton Accords. Given this volume's focus on understanding coalition behavior and constraints in statebuilding, I demonstrate that in order for mediators to maintain trust and loyalty among the members of their coalitions, they must build on previously agreed principles in peace processes. In this way, early agreements provide the basis for subsequent agreements in a path-dependent manner.

I contend that in the case of Bosnia, the ideas of rigid, ethnically based institutions founded in group rights were introduced early on in the peace negotiations and were held in place through coalition dynamics. Even though the mediators and circumstances on the ground changed over time, and even though there were other choices available during two critical junctures, the need to hold the coalition together created the conditions under which mediators were reluctant to question previously agreed upon principles, such as the primacy of group rights over individual rights. I argue that as different international actors became involved in conflict and post-conflict settings, the constraints and realities of coalitions inherently and inextricably shaped the ideas and institutions that were adopted in the statebuilding exercise.

Path dependence

Path-dependent arguments have not generally been used to explain international peace processes. Nevertheless, I argue here that a path-dependent type of argument provides the best means of explaining why certain principles “stick” in peace processes even when actors and conditions change, or when other choices appear more logical.

Path-dependent explanations focus on crucial historical events – “critical junctures” – that lead to continuing institutionalized relationships.⁶ Path dependence “occurs when a contingent historical event triggers a subsequent sequence that follows a relatively deterministic pattern.”⁷ Such explanations have been used to explain a variety of seemingly non-rational outcomes: from the QWERTY layout on keyboards to the effects of skill formation and early labor organizing on contemporary market economies in Europe, but not coalition behavior or peace process outcomes.⁸ One of the main criticisms of path-dependent arguments is that they too loosely adhere to the truism that “history matters,” rather than specifying the mechanisms by which certain historical events matter.⁹ This charge has been answered by many writing in the path-dependent tradition.¹⁰ The mechanisms of ideational and institutional reproduction vary depending on the case and circumstances, but in order for an explanation to be path-dependent, the order of events is critical – earlier events shape the trajectory of later events. Moreover, path-dependency theorists have specified two types of path-dependent sequences: while “reactive sequences” are causally connected events that, almost pendulum-like, swing slowly back and forth across time in reaction to events (in response to positive or negative feedback), in “self-reinforcing sequences,” the initial adoption of an institution

"puts in place a set of forces ... that encourage the choice to be sustained."¹¹ It is the self-reinforcing sequence that tends best to explain peace process outcomes.

Causal mechanisms and decision-making in international peace processes are largely under-theorized. This chapter posits that peace processes have certain dynamics that can be understood using the lens of path dependence in order to explain why specific historical decisions can have a lasting impact. Peace accords in civil wars are incredibly difficult to achieve, and it often takes years and many attempts for an agreement to be signed by all sides. International peace processes are often confounded by the sheer number of actors – there are usually many international, regional, and domestic players who seek to play a role in the agreement. Agreement among the international and regional actors is a necessary but not sufficient element of any lasting peace accord after a civil war.¹² Once a principle is established early on in peace negotiations, as more partners join the coalition and sign onto the peace process, it becomes increasingly difficult to overturn founding principles. Partners may hold previously agreed upon principles in place, even at times when such principles may not be widely perceived as just or leading to rationally efficient ends, in order to maintain cohesion and momentum in the peace process.

There are several path-dependent effects that often occur in peace processes, all of which are present in the Dayton Peace Accords that ended the war in Bosnia: first, early agreements in peace processes, even if not signed by all parties, often stick through to the final, written accord, even if the circumstances on the ground change or if new, possibly better ideas are introduced later on. The early temporal introduction of a principle that several players can agree to collectively holds that principle in place, even after the key players and/or circumstances on the ground may change. Trust among decision-makers is also built early on in successful peace processes, reinforcing commitments among decision-makers.

Second, agreements in peace processes are arrived at in bundles of different types and of different degrees of importance. Once an initial principle is held collectively, subsequent parts or bundles of the peace deals will often *build on* and *link with* that principle, but not necessarily in a deterministic way.¹³ Third, nevertheless, the small bundles of agreements become self-reinforcing with time, as the principles become more widely shared and written into institutional arrangements. In times of uncertainty and contested choices, "making a choice or taking an action puts in place a set of forces or complementary institutions that encourage that choice to be sustained," even though the outcome may be unstable, or might not achieve the overall goals of powerful actors.¹⁴ In the following section I demonstrate how coalition partners wound up supporting the principle of ethnic group rights over individual political rights. In doing so, coalition partners helped to build state institutions based on group rights, even though the principles contradicted those of liberal democracies and have in practice tended to result in ill-functioning state institutions.

The peace process in Bosnia

We have to stop this war. Yet, we shall not stop it by engaging in hopeless attempts to work out compromises between a number of othernesses, compromises whose consequences would amount to confirming otherness as the supreme principle.¹⁵

The first attempt at ending the Bosnian War came in the form of the Lisbon Agreement, proposed in March 1992 by the European Community's representative, Jose Cutileiro. This agreement introduced the ideational link between ethnicity, territory, and national group rights. While some Bosnian institutions had previously been loosely divided along ethno-religious lines in the communist era, and even under Ottoman rule, never before had territory been linked to ethnic group rights. Why would the Europeans propose such a link? As one observer explains, "Europeans are used to nation-states where ethnicity and territory overlap. They tend to be uncomfortable with the idea of multiethnic states, and do not really understand the realities of them, or the legal possibilities for accommodating multiethnicity."¹⁶ More importantly, according to Susan Woodward, it is not clear whether Cutileiro and his fellow members of the European Commission even realized that by linking ethnic rights and territory, that they had endorsed a major concession to the extremist Serbs.¹⁷ Radovan Karadzic, the Bosnian Serb extremist leader who was later put on trial in The Hague for genocide and other war crimes, was reportedly overjoyed upon hearing about the Lisbon Agreement, and declared it "A great day for Bosnia."¹⁸

The idea of linking ethnic groups with territorial boundaries assumed ethnically pure regions and ethnically pure peoples, neither of which existed in fact in Bosnia. First, in terms of geographical patterns, ethnic group distributions across Bosnia were, as many described, like "leopard prints." It would be impossible to separate and consolidate ethnic groups without widespread population shifts, otherwise known as ethnic cleansing. "Of the 100 *opstine* [districts] that made up Bosnia-Herzegovina on the eve of the war, in about one-third of them no ethnic community had a strong majority or could claim a clear-cut numerical advantage."¹⁹ Second, the option of a "Bosnian" identity had never been offered in the census, even though there are strong arguments indicating a popular will to form such an identity.²⁰ Other survey data from before the war indicates strikingly high levels of ethnic tolerance.²¹ The reality of the bloodlines in Bosnia is that of mixture over centuries of coexistence and inter-marriage.²² In other words, in Bosnia before the war, territories and bloodlines were ethnically mixed, but the institutions being proposed in Lisbon did not accommodate for this reality.

The plan's main failings were that it denied the existence of a separate Bosnian (civic) national identity, tied ethnic rights to land, and denied the basis for individual political rights. Introduced by the European Commission and the extremist Bosnian Serbs, the plan presented the first critical path-dependent principles, which would eventually inter-lock with other bundles of agreement and

later become institutionalized, even though none of those initial decision-makers would be making decisions during the Dayton negotiations. Moreover, that central concession to the extreme nationalist Bosnian Serbs – the link between ethnicity and territory that did not exist on the ground at the time it was proposed – would last through to the final peace accord, initialed at the Wright-Patterson Air Force Base in Dayton, Ohio.

However, before the Dayton Accord, there were several other peace plans that solidified the parameters within which Dayton would be negotiated. The Vance–Owen plan of October 1992, the heart of which was proposed by Alija Izetbegovic, the president of Bosnia at the time, sought to roll back some of the ideas of ethnic partition, opting instead for cantons that reflected more closely the scattered ethnic mix across Bosnia. Within several months after it was proposed, all sides had signed that plan, but when the new Clinton administration came into office in January 1993, some of its members advised the Bosnian government to withdraw approval, suggesting that the United States would try to negotiate more land for the “Muslims.”²³ After the Clinton administration’s month-long policy review of Bosnia, and facing an absence of good alternative options, Secretary of State Warren Christopher threw up his hands, declaring Bosnia “A Problem from Hell”;²⁴ it would be another year-and-a-half before the Clinton administration would fully engage in the peace process.

After Vance–Owen, in subsequent deals, rather than retaining the concept of cantons and mixed populations, such ideas were jettisoned in favor of the original Lisbon concept of ethnically homogeneous territories in Bosnia. Subsequently, the Owen–Stoltenberg plan of September 1993 essentially proposed dividing Bosnia into three ethnic states. Yugoslav premier Slobodan Milosevic and Croatian president Franjo Tudjman signed on immediately, recognizing that they could both realize their dreams of “Greater Serbia” and “Greater Croatia” by incorporating parts of Bosnia into their new states. Not surprisingly, the Bosnian Muslims, the least militarily strong of the players and the main victims of the war, rejected the plan and the war continued.

Meanwhile, President Clinton’s cabinet continued to disagree about which military policies to pursue. Some favored lifting the arms embargo on the region (which was disproportionately hurting the Bosnian Muslims) and striking at extremist Serb forces, otherwise known as “lift and strike.”²⁵ Others preferred a ceasefire and limited protection of Muslim enclaves, sometimes referred to as “containment.” President Clinton preferred the “lift and strike” option, which was also the preference of Republican Bob Dole and many others in the US Senate. But the Europeans did not agree. The UN peacekeeping troops on the ground (especially from France and other European countries) would be vulnerable to hostage-taking or worse if the arms embargo was lifted or if NATO began seriously targeting Serb positions; thus NATO’s hands were tied. For two years, international efforts to end the war centered on the United Nations and the European Community, but neither body made much progress toward peace. There were too many external as well as internal actors fueling, rather than dampening, the conflict spiral.²⁶ In seeking to establish a “representative”

government, the mediators viewed inclusion on the basis of ethnic groupings as largely unproblematic. The idea had been proposed by others previously, and was simply iterated in this peace deal.

In this context of continuing disagreement among external actors and violent conflict on the ground, the United States and its coalition partners marked their first successful step toward ending the war. In March 1994, the "Washington Agreement," negotiated by US Senior Foreign Service Officer Charles Redman, brought a stop to the fighting between Muslims and Croats.²⁷ The agreement set up a fairly rigid ethnic power-sharing arrangement called the Muslim-Croat "Federation," which, similar to Lisbon, reaffirmed the ethno-territorial link, reintroduced ethnic power-sharing in state institutions, and ethnic group rights. It also introduced the concept, however fuzzy at the time, of a separate Bosnian Serb "entity" that would exist alongside the federation, both of which would be part of a single, decentralized Bosnian state.²⁸ The US's primary goal behind the "Washington Agreement" was to shift the military balance-of-power on the ground against the extremist Bosnian Serbs. While this was a positive result of the accord, at the same time it further closed the door to ideas of how political organization might be achieved in Bosnia other than along rigid ethno-territorial lines based on group rights. As Steven Burg and Paul Shoup remarked, "[T]he main consequence of the Federation was to make it possible for the United States to accept the partition of Bosnia."²⁹ There never was a discussion, for example, of asking non-extremist Bosnian Serbs to join the federation, or of political organization based on non-ethnic principles.³⁰

Around the same time, while the Clinton administration worked to decrease the number of actors on the ground, it also sought to reduce the number of international players that were augmenting the conflict by supporting different factions. Parallel to the UN and EC efforts, a smaller "Contact Group" had formed, which included the United States, France, the United Kingdom, Germany, Russia, and later Italy. In October 1994, the members of the Contact Group agreed among themselves to support a plan endorsing a 49–51 percent ethno-territorial split between the Bosnian-Croat federation and what would come to be called the Republika Srpska, the Serb Republic. The plan was endorsed by the major external coalition powers at a time when the Bosnian Serb Army held about 70 percent of the territory – in other words, it looked like a good deal for the Muslim-Croat Federation, and it finally brought the major players, including Russia and France, together with one voice. However, it further institutionalized "the de facto division of Bosnia, long the aim of the Serbs and a premise of European effort, but antithetical to the idea of a multiethnic and territorially intact Bosnia," even though some members of the Clinton administration – along with others in Bosnia, not only Muslims – favored a multiethnic, central state.³¹

These two central agreements among international actors – the concept of ethno-territorial division, and the 49–51 percent split – would prove cornerstones of the eventual peace, even during two crucial decision moments, when other choices could have been made. After the external actors agreed on these two points (but not because of those agreements), the endgame of the war emerged.

In July 1995, extremist Bosnian Serb forces attacked the UN-designated "safe area" of Srebrenica, killing upward of 8,000 Muslim men and boys and ethnically cleansing more than 25,000 people. The attack triggered a strong NATO response, with "Operation Deliberate Force," after the UN peacekeepers were withdrawn from sensitive positions. The French and British deployed a "Rapid Reaction Force," which helped withdraw UN peacekeepers and assisted in the liberation of Sarajevo after more than three years of being under siege by extremist Bosnian Serbs. Richard Holbrooke secured a deal whereby the extremist Bosnian Serb leaders would not negotiate directly with the United States and others, since they had been indicted by the War Crimes Tribunal; instead, Slobodan Milosevic would represent the Bosnian Serbs during the negotiating process.

Meanwhile, in neighboring Croatia, where extremist Croatian Serb forces had been occupying approximately one-third of the territory, in August 1995, the Croatian government launched an attack on the Serb enclaves, and ethnically cleansed the majority of armed, extremist Croatian Serbs, along with hundreds of thousands of Croatian Serb civilians. Notably, Slobodan Milosevic's largely Serb-controlled, severely debilitated Yugoslav National Army (JNA) did not come to fight alongside the Serbs in Croatia as it had earlier in the war (the Bosnian Serbs were also incapable of assisting the Croatian Serbs).

With Croatian Serbs on the run through the region, the JNA depleted of fighting forces, and extremist Bosnian Serb communications and forces crippled by NATO attacks, the Bosnian Army and the Bosnian Croat Forces (HVO) began to advance on the battlefield in Bosnia. Shifting the balance of military power on the ground in Bosnia had been one of the main goals of US policy, and it was achieved. The Federation overran more than 50 percent of the territory of Bosnia. How much more is a question of some debate, but for the first time during the war, the Bosnian Muslims and Croat forces were poised to take the Serb stronghold of Banja Luka, and defeat the Bosnian Serbs.³² However, the United States ordered the Federation to halt the military advance.³³

There were two moments in 1995 when the political landscape in Bosnia was open for reshaping: from August to September, when the military situation on the ground was shifting rapidly against Bosnian Serb extremists, and in November, after the ceasefire, when the Dayton accords were being negotiated; although the second opening was not as wide as the first. In August–September, the future shape and governing structures of Bosnia were far from certain. The arch of the war had largely been determined by external powers – neighboring Serbia and Croatia, Europe, and to some extent the United States and international sanctions.

By August, President Milosevic of Yugoslavia and the extremist Bosnian Serbs were in a remarkably disadvantaged military, and thus negotiating, position. More than anything, Milosevic wanted the economic sanctions against Serbia lifted. The Croats were happy to have "liberated" their territory of Croatian Serbs, and were not particularly focused on assisting the Bosnian Croats. The leader of Bosnia, Alija Izetbegovic "was as easily swayed by one argument as he was by another" about future governing arrangements.³⁴ European allies were delighted that the Clinton administration had decided to take the

lead in bringing peace to Bosnia, and as the eventual drafter of the Bosnian constitution wrote, "by the early fall of 1995, the international community had a unified voice, and it spoke with an American accent."³⁵ In other words, the Clinton administration was poised to make some very important, lasting decisions not only about the end of the fighting, but also about the future political shape of Bosnia. However, rather than advocating for American and Bosnian ideals of political order in multiethnic states, or including civic actors in the peace process, the members of the Clinton administration stuck to prior ideas introduced by the Europeans and extremist Serbs, back when the military situation on the ground favored extremist Serbs.³⁶

A second chance to introduce new governing ideas arose during the Dayton peace process in November 1995, when Holbrooke and his team had almost complete control over the details of the constitution: "Negotiating decisions – even ones as important as the basic principles of Bosnia's constitution – did not flow from Washington. They were not approved by formal meetings of the National Security Council. They were made by Holbrooke and his delegation."³⁷ While many parameters had been set before the negotiations at Dayton (namely, the ethno-territorial split), Holbrooke and his team were in charge of both the constitutional details and the mechanics of the peace negotiations; the degree of control "over both the process and substance of these negotiations was rare" when compared to other negotiations.³⁸ Moreover, the team drafting the Bosnian constitution was not particularly constrained by the positions of the warring factions. The parties, according to several eyewitnesses at Dayton, were obsessed with the map and the status of Brcko, and were not focused on the constitution or the structures it created: "The content of the Constitution could not really have mattered very much to the parties in the final analysis."³⁹

Since the drafters of the constitution realized that they did have flexibility in the content of the constitution, they labored to introduce human rights provisions. They also worked to create central, unified state institutions. However, the constitution created structures that recognize group rights over individual rights in all of the central political institutions. Again, the United States, and by default its coalition partners, shied away from pressing to spread the ideals of individual political rights, civic nationalism, or from allowing the Bosnian Muslims who shared those ideals to prevail in the negotiations.⁴⁰

Alternative explanations

A number of hypotheses might explain these decisions. Were they merely a result of rational choice? Or are they evidence of a double standard in the cognitive beliefs of foreign policy-makers? Could they be attributed to bureaucratic politics, or the influence of an epistemic community?⁴¹ None of these explanations adequately accounts for how international statebuilders agreed to principles that helped to produce a state that was, in fact, quite different from the original intentions of the international coalition.

As mentioned, there were two critical junctures, or openings, in the peace process when the main ideas for the peace plan and the future Bosnian state were under active consideration. During the first critical juncture, in August–September 1995, the rational and easiest choice would have been to allow the Bosnian Muslims to win. American leaders – both Republicans and Democrats – had thrown their support behind the Bosnian Muslims because the Muslims were the main victims of the war, and because they were the least nationalistic group. Indeed, two important Bosnian Muslim leaders, Muhamed Sacirbey and Haris Silajdzic, had studied in the United States, and admired the US ideas of individual political rights in multiethnic societies, coupled with important guarantees for non-discrimination against members of minority groups, and civic conceptions of nationalism.

Moreover, one year earlier, a precedent of “allowing the victim to win” had been established in Rwanda, when the United States and others allowed the Tutsi-dominated Rwandan Patriotic Forces to overrun the Hutu military and militias that had been committing genocide against Tutsis and moderate Hutus in Rwanda. The United States then gave a nod as Croatian forces overran the Croatian Serb-occupied regions in Croatia, despite significant doubts about feasibility among members of the US military. While some in the Pentagon feared that allowing the fighting to continue might spark a wider regional war, the Pentagon’s predictions about Serb military strength had been proven consistently off-base. Allowing a defeat of the Bosnian Serbs would also most likely have required less of a future commitment of US, EU, or UN post-war resources. Nevertheless, the Clinton administration stuck to other ideas of how the war ought to end, introduced during earlier peace negotiations and agreed by coalition partners.

Is there evidence of a Machiavellian double standard that had become part of the “operational code belief system” of US foreign policy-makers, of advancing liberalism at home but condoning illiberalism abroad? That is to say, could some double standards of beliefs explain foreign policy-makers’ behavior? There is little if any support for the explanation that US foreign policy-makers were trying to advance illiberalism. President Clinton, Warren Christopher, Madeleine Albright, and Anthony (Tony) Lake were all in favor of preserving a united Bosnia.⁴² Richard (Dick) Holbrooke wanted to use US power as a positive force in the world. According to Tony Lake, “Dick was especially passionate about holding Bosnia-Herzegovina together.”⁴³ But how to achieve that goal was unclear. The United States’ actions since Dayton, particularly the work of Nicholas Burns, further demonstrates that the United States was not actively pursuing a policy of illiberalism abroad.⁴⁴ In other words, there is no solid evidence that the United States’ illiberalism was intentional, or that any of the lead policy-makers believed in promoting illiberalism abroad. To the contrary, they all often spoke of promoting democracy abroad. Nevertheless, somehow, the promotion of ethnocratic solutions became part of US and coalition policy.

In terms of bureaucratic politics, the shift on the battlefield in favor of the Bosnian Muslims occurred at a time when head of the National Security Council

(NSC), Tony Lake, had, after years of disagreement, convinced all of the US agencies – the US Mission to the United Nations, the Department of Defense, the Department of State, and the National Security Council, as well as President Clinton – to sign onto to a plan that reaffirmed several basic points agreed to previously. These points included, among others, the two entities, the 49–51 territorial split, Croatian and Serbian recognition of Bosnia as an independent state, and a commitment of 20,000 US troops for a NATO peace operation with an exit deadline of one year after deployment.⁴⁵ The NATO operation had been in the planning stages for over a year, and relied on the 49–51 territorial split agreed to by the Contact Group. However, many of these decisions were based on ideas that were not introduced from within the US government – they were not the product of solely American organizational structures, thus the bureaucratic politics argument, which relies on coherent and defined organizational structures, does not hold.

Were there academics or specialists in the think-tank community advocating in favor of the ideas of ethnic power-sharing, consociationalism, or soft partition as a means to end the war at a time when US decision-makers were unsure of how to proceed? There is almost no evidence of influence of an epistemic community at work during the Bosnia decisions. While it is true that at the beginning of the war, President Clinton and Warren Christopher were reading Robert Kaplan's *Balkan Ghosts*, and appeared to agree for a time with the "primordial" view of the conflict, their views changed with time. As Jim O'Brien explains, "By 1995, no respected foreign policy-maker thought in primordial terms. As our intelligence improved over time, we realized that instrumental elites were the cause, and possibly the way out."⁴⁶ Another long-time analyst notes, "All of the academic advisers were telling Holbrooke that a [single multiethnic state] in Bosnia was hopeless, so he got rid of them."⁴⁷ Advisers from outside the government did not play a significant role in policy formulation with regard to ending the Bosnian war.

The explanation that appears the best fit is that of path dependence. In August, after Tony Lake convinced the various parts of the US government of the plan, he spent a week touring European capitals to reaffirm their commitment to it. Subsequently, negotiations in Geneva and New York (the Basic Principles) further institutionalized the principles of ethnic institutions and divisions, within a single, but not particularly powerful, central state. With each verbal, and then written agreement among external actors, it became increasingly difficult to reopen past debates, even though the situation on the ground no longer mirrored the conditions under which the previous agreements had been made. In other words, agreement among divergent voices within the US administration, and among the Americans, Europeans, and Russians, trumped the situation on the ground, along with rational ideas for more flexible, liberal, and potentially long-term, conflict-dampening structures for Bosnia. When it appeared that the situation on the ground might dislodge the ideas agreed to within the United States and between its coalition partners, the United States told the advancing Muslims and Croat troops to stop or they

would no longer enjoy the support of the coalition.⁴⁸ In other words, the usual explanations of foreign policy decision-making are not operative here. Rather, it appears that the ideas that gave rise to the decisions were simply dependent on previously-agreed, similar ideas.

Principles, peace processes, and institutions

Since 1995, the Dayton Accords has brought about many years of ceasefire in Bosnia, which is an important and uncontested contribution. However, the peace should be characterized as “negative,” rather than “positive,” in large part because of the institutional structures that Dayton created. In simple terms, Bosnia today is an unstable ethnocracy. While it may be labeled an “emerging federal democracy,” according to the CIA World Factbook, or a consociational democracy, as some academics might say, its major political parties, and most state institutions, are rigidly divided along ethnic lines. As the editors of this volume argued in a 2009 article in *Foreign Affairs*, “Bosnians are once again talking about the potential for war.”⁴⁹

Dayton institutionalized the two main political entities, the Federation of Bosnia-Herzegovina (FBiH) and Republika Srpska (RS).⁵⁰ The Constitution of Bosnia-Herzegovina appears as Annex IV of the Dayton peace plan. It contains significant human rights guarantees.⁵¹ However, at the same time, the constitution is self-contradictory. First, in terms of contradictions, while “human rights” are to be guaranteed, the constitution sets up a rotating, ethnically based, three-member presidency wherein one of the presidents must be ethnically Serb, another ethnically Croat, and the other ethnically Bosniac (Muslim) (Article V). There is no possibility that someone who does not subscribe to the three ethnic groups may be elected.⁵² In this sense, the constitution is fundamentally discriminatory.⁵³

The discriminatory institutions and ethnic quotas do not stop at the presidency. Indeed, they run through all major state institutions. The constitution establishes a state-wide, 15-member “House of Peoples,” wherein five delegates must be Serbs, five Croats, and five Bosniacs.⁵⁴ Other legislative bodies are also organized by strict ethnic quota, in both the FBiH and RS. Beyond the strict ethnic quotas for elected officials,

Almost every public office – including low-level administrative jobs – is allotted according to an ethnic quota, a spoils system that has led to extensive patronage networks, corruption, and inefficiencies ... the framework is tailor-made for those who wish to stoke ethnic antagonisms for political gain.⁵⁵

Building group rights into the constitution and state structures directly challenges the notion of individual rights, and the right to representative government.⁵⁶ It is nearly impossible to envision a shift away from ethnic politics given the contours of the current constitution.

Since the fighting has ended, many institutional reforms have only "accentuated the predominance of group representation over individual rights."⁵⁷ However, there are many reasons to think that people in Bosnia-Herzegovina might not want to participate in a political system where only ethnic interests may be expressed. As one of the sitting Bosnian presidents lamented:

The simplified ethnic approach to Bosnia-Herzegovina is a path to hell.... In the Bosnian Constitution, ethnic and group rights are raised above all else. I don't want that. I want to be a man, an individual. I am a proud Croat, but I have other interests as an individual, not simply a member of a group. We need equal opportunity for every individual, just as you have in the US.⁵⁸

Moreover, there have been thousands of repatriations to areas where returning refugees would be part of an ethnic minority, and inter-marriages continue.⁵⁹ According to recent opinion polls, support for secession is in decline, especially in majority "Croat" areas, but even across the RS.⁶⁰ Multiethnicity and mixed-ethnicity continue to be fact in Bosnia; however, given the current institutions, there is no room for non-ethnic political expression.⁶¹ The United States and coalition partners were instrumental in creating the current institutions in Bosnia, even though those institutions are anathema to the ideas of individual political rights. As Jim O'Brien explains:

Because the Dayton agreement defines each constituency in ethnic or national terms, the result is a self-reinforcing cycle: politicians reward their voters for approving ethnic appeals, and voters naturally seek more rewards by approving the politicians who make those appeals. As long as this cycle continues, no policy prescription can make the popular parties less nationalistic or the less nationalistic parties more popular.⁶²

Implications and recommendations

The instability and ethnocracy that currently exist in Bosnia were by no means the intention of the United States and its coalition partners, but they are the incontrovertible result of the internationally led mediation process. The path toward rigid ethnic institutions was set early in the negotiation process. Policy-makers followed that path even though, during two critical decision moments, they had other choices. The principles of ethnic, group rights over individual rights and linking ethnicity and territory where the two were not previously linked contradicted the cherished Western principles of individual political rights and civic national identity. Indeed, one could argue that these are two of the most important principles undergirding liberal democracy. The ideas of rigid ethnic divisions were introduced by the few (who, in the end, were on the militarily weaker side during the negotiations). In the absence of constitutional and area studies experts, and negotiating under significant time pressures, coalition partners did not search

for other, more appropriate or pragmatic principles. Rather, rigid ethnic solutions became self-reinforcing with each verbal, and then written agreement among external players. During the two critical junctures when coalition partners could have introduced other principles, the pull of the path toward simply incorporating and building on prior decisions proved strong. The decisions on the role of ethnicity and group rights in state institutions in Bosnia occurred not merely because some minority populations were demanding them, but largely because of the inertia of path dependence among international actors.

The most important policy recommendation one can take from this case is that one of the basic, underlying principles of liberal democracy – individual rights (in conjunction with minority group protections) – ought to be promoted with greater vigor. If the United States and its coalition partners intend to promote positive peace and democracy, rather than negative peace and ethnocracy, then the path toward ethnic group rights-based regimes must be altered. When negotiating the end to future ethnic civil wars, it is up to American leaders, in conjunction with coalition partners, to ensure that the principle of individual political rights is introduced early and underlies the basic structures of the new state.

Notes

- 1 As Paula Pickering's chapter in this volume notes, most discussions of "local" really mean national elites. P. Pickering "Acting locally." Chapter 6 below.
- 2 On the causes of the war, see arguments about instrumental domestic elites in their quest to hold onto power, V.P. Gagnon Jr., "Ethnic Nationalism and International Conflict: The Case of Serbia," *International Security* 19(3), Winter 1994/1995: 130–166; the rise and erosion of a Yugoslav national culture, A. Wachtel, *Making a Nation, Breaking a Nation*, Stanford: Stanford University Press, 1998; political economic institutions that gained separate force within each of the republics, B. Crawford, *Markets, States, and Democracy*, Boulder: Westview Press, 1995; relative deprivation fueling animosity between wealthy and poor republics, S. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Washington, DC: Brookings Institution Press, 1995; and international actors who fueled different sides of the war, B. Rathbun, *Partisan Interventions: European Party Politics and Peace Enforcement in the Balkans*, Ithaca, NY: Cornell University Press, 2004, and Stephen Saide-man, *The Ties That Divide: Ethnic Politics, Foreign Policy, and International Conflict*, New York: Columbia University Press, 2001.
- 3 See, for example, J. O'Brien, "The Dayton Constitution of Bosnia and Herzegovina," in L. Miller (ed.), *Framing the State in Times of Transition: Case Studies in Constitution Making*, Washington, DC: USIP Press, 2010, pp. 233–349.
- 4 P.C. McMahon, "Bosnia: A Model to Emulate or Avoid," *Political Science Quarterly* 119(4), 2004: 569–593.
- 5 Johan Galtung defines negative peace as the absence of violence in *Peace, War and Defense: Essays in Peace Research*, vol. II, Oslo: International Peace Research Institute, 1975. I define ethnocracy as a political system where state institutions and political parties are organized primarily along ethnic lines as opposed to non-ethnic forms of political organization.
- 6 R. Berins and D. Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America*, Princeton: Princeton University Press, 1991.

- 7 J. Mahoney, "Path Dependence in Historical Sociology," *Theory and Society* 29(4), 2000: 535.
- 8 P.A. David, "Clio and the Economics of QWERTY," *American Economic Review* 75, 1985: 332–337; K. Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan*, Cambridge: Cambridge University Press, 2004.
- 9 P. Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94, 2000: 251–267.
- 10 K. Thelen, "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science* 2, 1999: 388–392; Mahoney, op. cit.: 535; Scott E. Page, "Path Dependence," *Quarterly Journal of Political Science* 1, 2006: 87–115.
- 11 Mahoney, op. cit.: 508–509; Pierson, op. cit.: 251; Page, op. cit.: 88.
- 12 See L.M. Howard, *UN Peacekeeping in Civil Wars*, Cambridge: Cambridge University Press, 2008, p. 10.
- 13 As Jack Goldstone explains, "outcomes are related stochastically to initial conditions." See his "Initial Conditions, General Laws, Path Dependence, and Explanation in Historical Sociology," *American Journal of Sociology* 104, 1998: 843.
- 14 Page, op. cit.: 88.
- 15 Speech on the Bosnian Peace Process, President Vaclav Havel, June 29, 1995.
- 16 Interview with Damir Arnaut. While the accuracy of this statement may be debatable, there certainly have been difficulties of sub-ethnic accommodation in West European states.
- 17 S. Woodward, op. cit., p. 281.
- 18 A. Kuperman and T. Crawford (eds.), *Gambling on Humanitarian Intervention: Moral Hazard, Rebellion and Civil War*, New York: Routledge, 2006, p. 23.
- 19 S. Burg and P.S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention*, Armonk: M.E. Sharp, 2000, p. 29.
- 20 V.P. Gagnon Jr., *The Myth of Ethnic War: Serbia and Croatia in the 1990s*, Ithaca, NY: Cornell University Press, 2004.
- 21 Ibid., pp. 39–43.
- 22 Ethnic groups in Bosnia had also not fought one another as groups until World War II, and even then "it was relatively new and had roots beyond attachment to ethnic identities." Gagnon, op. cit., p. 32.
- 23 S. Woodward, op. cit., p. 306.
- 24 This became the title of Samantha Power's Pulitzer Prize-winning book, *A Problem from Hell: America and the Age of Genocide*, New York: Basic Books, 2002.
- 25 I. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy*, Washington, DC: Brookings Institution Press, 2000, pp. 14–15.
- 26 See Rathbun, op. cit.; Saideman, op. cit.
- 27 Daalder, op. cit., pp. 26–27; R. Holbrooke, *To End a War*, New York: Random House, 1998, pp. 154, 74.
- 28 Note that the Serb Civic Council, also formally created in March 1994, objected to the division. The Council represents "that part of the Bosnian Serb nation which has never accepted the policy of ethnic cleansing and ethnic division of Bosnia." Mirko Pejanovic, *Through Bosnian Eyes: The Political Memoirs of a Bosnian Serb*, Sarajevo: TDK, 2002, p. 194.
- 29 Burg and Shoup, op. cit., p. 298.
- 30 Author interview with Daniel Serwer, Washington, DC, September 9, 2009. Serwer was in charge of implementing the Washington Agreement.
- 31 Daalder, op. cit., p. 30; Pejanovic, op. cit.
- 32 CNN.com, "Sacicbey, Silajdzic, Positively Giddy," September 17, 1995.
- 33 D. Chollet, *The Road to the Dayton Accords: A Study of American Statecraft*, New York: Palgrave Macmillan, 2005, p. 113; interview with Daniel Serwer; Holbrooke, op. cit., pp. 166–167.

- 34 L. Silber and A. Little, *Yugoslavia: Death of a Nation*, New York: TV Books, 1996, p. 219. In his memoir, Richard Holbrooke confirms that Izetbegovic was not sure of his goals, and that Holbrooke felt that he had the opportunity to shape the Bosnian leader's preferences. See Holbrooke, op. cit., pp. 97, 165.
- 35 O'Brien, op. cit., p. 95.
- 36 On the exclusion of civic actors, see J. Udovicki, "Conclusion," in J. Udovicki and J. Ridgeway (eds.), *Burn This House: The Making and Unmaking of Yugoslavia*, Durham, NC: Duke University Press, 1997, pp. 279–316.
- 37 Chollet, op. cit., p. 74. See also G. Nystuen, *Achieving Peace or Protecting Human Rights: Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement*, Boston: Martinus Nijhoff Publishers, 2005, p. 12.
- 38 Chollet, op. cit., pp. 189–190, 125–126; Holbrooke, op. cit.
- 39 Nystuen, op. cit., p. 17. A final decision on Brcko governance was not made at Dayton. Brcko today is the most integrated region of Bosnia, and has a separate governing structure from the two entities.
- 40 Holbrooke's team even proposed an ethno-territorial division of Sarajevo, but Milosevic said it was not necessary. Chollet, op. cit., p. 145.
- 41 See P. Haas, "Introduction: Epistemic Communities and International Policy Coordination," *International Organization* 46(1), 1992: 1–35.
- 42 Chollet, op. cit., p. 40.
- 43 Interview with Dr. Anthony Lake, Georgetown, October 4, 2009.
- 44 Nicholas Burns was, until 2008, the highest-ranking career diplomat in the US Department of State. Nicholas Kralev, "US Pressures Balkan State to 'Modernize'; Dayton Pact Ended War, But Impedes Future," *Washington Times*, November 22, 2005, p. A14.
- 45 Daalder, op. cit., pp. 102–111.
- 46 Author interview with Jim O'Brien, October 5, 2009.
- 47 Author interview with Daniel Serwer.
- 48 Some maintain that Holbrooke threatened to turn NATO air power on the Bosnian Muslims and Croats if they did not halt their advance, but Holbrooke does not corroborate this claim in his memoir. He does, however, express regret about not allowing the troops to advance further, "had we known then that the Bosnian Serbs would have been able to defy or ignore so many of the key political provisions of the peace agreement ... the negotiating team might not have opposed [the] attack" (p. 167). In the conclusion of his memoir, Holbrooke reaffirms this regret, along with allowing the extremist Bosnian Serbs to retain the name "Republika Srpska." See Holbrooke, op. cit., p. 363.
- 49 P.C. McMahon and J. Western, "The Death of Dayton: How to Stop Bosnia from Falling Apart," *Foreign Affairs* 88(5), September/October 2009: 69.
- 50 One of Holbrooke's lingering regrets is that he pushed President Izetbegovic to accept the Serb extremist name "Republika Srpska" because it symbolizes extremism and separation.
- 51 See Article II of the constitution, and Z. Pajic, "A Critical Appraisal of Human Rights Provisions of the Dayton Constitution of Bosnia and Herzegovina," *Human Rights Quarterly* 10, 1998: 125–138.
- 52 This provision has been challenged by the European Court of Human Rights, but there is little chance that its ruling will be implemented soon.
- 53 Moreover, decisions by the presidents are to be made by consensus, but in the event that one disagrees, there is no real deadlock-breaking mechanism, building in the basis of a non-functioning state.
- 54 Article IV (1) (a).
- 55 McMahon and Western, op. cit.: 73. Note that the constitutions of the Federation and Republika Srpska were both established prior to Dayton, and are both constructed around ethnic groups and quotas. R. Belloni, *State Building and International Intervention in Bosnia*, New York: Routledge, 2007, p. 232. See also ICG Report, "Federation of Bosnia and Herzegovina: A Parallel Crisis," September 28, 2010.

- 56 See the Universal Declaration of Human Rights, especially Article 21.
- 57 F. Bieber, *Post-War Bosnia: Ethnicity, Inequality, and Public Sector Governance*, Houndmills: Palgrave Macmillan, 2006, p. 130.
- 58 Bosnian President Zeljko Komsic, Speech at George Washington University, October 15, 2009.
- 59 By 2002, approximately 900,000 people had "returned to homes from which they fled or were expelled during the war." International Crisis Group, "The Continuing Challenge of Refugee Return in Bosnia & Herzegovina," December 13, 2002.
- 60 R. Wilson, *The Northern Ireland Experience of Conflict and Agreement: A Model for Export?* Manchester: Manchester University Press, 2010, p. 118.
- 61 With the exception of Brcko, which has established its own little political, economic, and cultural entity in the north.
- 62 J. O'Brien, "A New Agenda for Bosnia and Herzegovina," USI Peace Briefing, Washington, DC, August 2009, p. 2.