

Appropriately crafted

C H A P T E R

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This chapter addresses the need to inform domestic political actors about the options available to them in terms of democratic institutions. It outlines the way in which basic institutions and policies can be purposely designed to maximize the prospects of democracy taking root in post-conflict societies. It also aims to draw these issues to the attention of interested external actors in the international community, who may be charged with the responsibility of crafting a settlement or supervising a period of state reconstruction. The following constitutional and policy levers are discussed, and the advantages and disadvantages of various options analysed.

- 4.1 *Power-Sharing Democracy: An Overview*
- 4.2 *The Structure of the State: Federalism and Autonomy*
- 4.3 *Executive Type: Presidentialism versus Parliamentarism*
- 4.4 *Electoral Systems for Divided Societies*
- 4.5 *Legislatures for Post-Conflict Societies*
- 4.6 *Human Rights Instruments*
- 4.7 *Language Policy for Multi-Ethnic Societies*
- 4.8 *National Conferences*
- 4.9 *Transitional Justice*
- 4.10 *Truth Commissions and War Crimes Tribunals*
- 4.11 *Building an Electoral Administration*
- 4.12 *Gender Commissions*

Democratic Levers for Conflict Management

Democratic Levers: An Introduction

Since the early 1970s a revised focus on the possibilities and prospects of democracy in divided societies has been evident around the world. At the base of this new wave of interest in democracy has been a recognition that democratic government, rather than oligarchy or authoritarianism, presented the best prospects for managing deep societal divisions. Democracy increasingly came to be seen as not just possible, but necessary, for the peaceful management of divided societies. This more optimistic assessment of the potential of democracy was greatly boosted by what has been characterized as the “third wave” of democratization which, beginning in the 1970s and gaining pace in the early 1990s, has seen a threefold increase in the number of democratic governments around the world.

This unprecedented expansion of democratic government, concentrated particularly in the developing world, has led to a renewed focus on the question of which institutional arrangements are most likely to secure stable and legitimate democratic government in divided or post-conflict societies. There is an increasing recognition that the design of political institutions is a key factor affecting the likelihood or otherwise of democratic consolidation, stability and longevity. A better understanding of the effects of political institutions also holds out the possibility that we may be able to design institutions so that desired outcomes – for example, co-operation and compromise – are rewarded. Three broad areas of constitutional design have received particular attention in this regard: the territorial structure of the state; the form of the state’s legislative and executive functions; and the nature and structure of a state’s rules of political representation. This has meant careful examination of the competing claims of different forms of power sharing, federalism, the benefits of parliamentary versus presidential government, the political consequences of different electoral laws, and so on. Recent transitions to democracy in South Africa, Chile, the Philippines and elsewhere have also focused attention on “extra-constitutional” institutions and policies which may be of particular util-

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ity to countries emerging from a period of deep hostility and conflict. These include the use of transitional justice mechanisms such as truth and reconciliation commissions, war crime tribunals, gender commissions, electoral administrations and so on. While there are many devices, these interlocking “constitutional” and “extra-constitutional” mechanisms will be the focus of this chapter.

A basic precept of this handbook is that robust democratic governance is itself a fundamental pillar of building any sustainable settlement of a violent conflict. Democracy is a system by which conflicts in a society are allowed to formulate, find expression and be managed in a sustainable way, via institutional outlets such as political parties and representative parliaments, rather than being suppressed or ignored. It is, in the words of Adam Przeworski, a system for *managing* and *processing* rather than resolving conflicts. Disputes under democracy are never definitively “solved”; rather they are temporarily accommodated and thus reformulated for next time. The best example of this is the electoral process itself, where parties and individuals may “win” or “lose”, but where the losers may win next time and the winners know that their victory is only temporary.

Furthermore, the comparative experience of deeply divided societies to date strongly indicates that democratic procedures, which have the necessary inclusiveness and flexibility to manage deep-rooted identity-based conflicts, stand the best chance of delivering a lasting peace. In societies divided along identity lines, for example, the type of political institutions that protect group and individual rights, deliver meaningful devolution and encourage political bargaining are probably only possible within the frameworks of a democracy. Democracy is based, at least in part, on a common conception and adherence to the “rule of law”, which protects both political actors and the wider civil society. Ultimately, as democratic practices and values become internalized in the workings of society, democratic governance creates the conditions for its own sustenance. That is why a valuable indicator as to whether a country is likely to continue to be democratic is to look at its history: the longer the democratic history to date, the better the prospects that such behaviour will continue in the future.

A “minimal” conception of democracy, in terms of the right to participate in free and fair elections, has rapidly emerged as a fundamental international norm for states to observe. For democracy to be meaningful, however, these “rules of the game”

Democratic Levers: An Introduction

must have a meaning for political competitors beyond the dry pages of statute books or constitutions. They must be valued, and observed, of and for themselves. This is what is meant by democratic *consolidation*: that democratic practices become so deeply internalized by political actors that acting outside the institutional “rules of the game” becomes unthinkable. This demands a faith in the integrity of the political process that may not always be forthcoming in situations of deep hostility or conflict.

There is a significant caveat concerning this rosy view of democracy, however, and it concerns the nature of democratic institutions. Different types of society require different types of institutions. Federalism, for example, may be irrelevant to small homogenous countries but a virtual necessity for large heterogeneous ones (and it is thus no surprise that many large diverse countries like Canada, India, Australia and the US are all federal states). Different types of electoral systems can ensure the proportionate representation of minority groups or single-handedly ensure their exclusion. Parliaments and executives can be structured in such a way as to give all groups a share of power, or to enable one group to dominate over all others. The use of truth and reconciliation commissions can be a way to help heal old wounds, or to re-open them. Appropriately *crafted* democratic institutions are thus crucial to the sustainability of any negotiated settlement.

Unfortunately, the significance of institutional design has often been overlooked or ignored by both disputants and negotiators in many recent attempts to resolve conflicts. Indeed, constitution-makers in new democracies have often been content to restore the very institutions that were conducive to the previous breakdown, or else to look for inspiration to the institutions of the apparently successful democracies of the West, even though these have seldom been fashioned for the demands of post-conflict societies. The constitutional choices made at these times can often have major repercussions for a nation’s future prospects, so it is important to get them right from the start. We hope this chapter will help political actors make the best choices for their country by clarifying the range and consequences of the different institutional models.

The constitutional choices made during a settlement process can often have major repercussions for a nation’s future prospects, so it is important to get them right from the start.

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4.1 Power-Sharing Democracy: An Overview

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In power-sharing political systems, decision-making ideally occurs by consensus. All major ethnic groups in the country are included in government, and minorities, especially, are assured influence in policy-making on sensitive issues such as language use and education. Power-sharing democracy is often contrasted with “regular” or majoritarian, winner-take-all democracy in which the losers of elections must wait out-of-power in loyal opposition for a later chance to replace the government of the day.

4.1.1 *Preventing or escaping deep-rooted conflict*

4.1.2 *Group building-block versus integrative approaches*

4.1.3–4.1.4 *When does power sharing work?*

A Menu of Options 2 Power-Sharing Mechanisms (pp. 144–145)

4.1.1 Preventing or escaping deep-rooted conflict

The early introduction of power sharing can potentially prevent identity-based conflicts from turning violent. For example, many believe that getting a power-sharing agreement in Kosovo (an Albanian-majority province in Serb-majority former Yugoslavia) will be critical to keeping identity-related disputes in the region (e.g., education policy) from further escalating into another war in the Balkans. When governments are democratic *and* inclusive, the argument goes, violent conflicts can be prevented because minorities won't need to resort to violence to advance their interests.

Moreover, power sharing is seen as a viable route to escaping deadly conflicts. Following bitter wars such as in Bosnia, most observers agreed that the only way to preserve a united, multi-ethnic country – to keep the country from splitting up altogether – was to create a post-war system of government in which the Bosnian Croat, Bosniac (Muslim), and Bosnian Serb communities could share power (see Bosnia Case Study).

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The 1995 Dayton Accord set up a political system in which the three communities would make decisions collaboratively through a joint presidency and a parliament that included, in rough proportion to the population, the three main groups. Although it doesn't function as well as it was designed on paper, Bosnia's nascent power-sharing system appears to be its best chance to create a viable multi-ethnic democracy after such an intense civil war. Power sharing is also seen as a way to end civil wars and get a negotiated settlement – and to build more legitimate democratic institutions – in current conflicts as far afield as Sri Lanka, Sudan and Tajikistan, as it was in other recent conflicts such as Angola, Sierra Leone or Cambodia.

4.1.2 Differences in approach

Policy-makers and scholars differ over whether a *group building-block* approach like that adopted in the Dayton Accord for Bosnia – in which groups (usually ethnically homogenous political parties) are viewed as the building blocks of a common society – leads to better conflict management than an *integrative* approach to power sharing. The latter approach emphasizes levers to build political alliances across lines of conflict.

The group building-block approach relies on accommodation by ethnic group leaders at the political centre and guarantees for group autonomy and minority rights. The key institutions are federalism and the devolution of power to ethnic groups in territory that they control, minority vetoes on issues of particular importance to them, grand coalition cabinets in a parliamentary framework, and proportionality in all spheres of public life (e.g., budgeting and civil service appointments). Like Bosnia, Lebanon has a political system in which representation and autonomy for the country's main religious groups is guaranteed in the constitution.

The integrative approach eschews ethnic groups as the building blocks of a common society. In South Africa's 1993 interim constitution, for example, ethnic group representation was explicitly rejected in favour of institutions and policies that deliberately promote social integration across group lines. Election laws (in combination with the delimitation of provincial boundaries) have had the effect of encouraging political parties to put up candidate slates – if they want to maximize the votes they get – that reflected South Africa's highly diverse society. And the federal provinces were created so as not to overlap with ethnic group boundaries (South Africa's groups are more widely dispersed in any event).

4.1 Power-Sharing Democracy: An Overview

Thus, the integrative approach seeks to build multi-ethnic political coalitions (again, usually political parties), to create incentives for political leaders to be moderate on divisive ethnic themes, and to enhance minority influence in majority decision-making. The elements of an integrative approach include electoral systems that encourage pre-election pacts across ethnic lines, non-ethnic federalism that diffuses points of power, and public policies that promote political allegiances that transcend groups.

The group building-block and integrative approaches can be fruitfully viewed as opposite poles in a spectrum of power-sharing institutions and practices. Which approach is best? To make such a determination, it is useful to consider power-sharing practices in terms of three dimensions that apply to both approaches: territorial division of power, decision rules, and public policies that define relations between the government and the ethnic groups. With these dimensions in mind, a “menu” of power-sharing institutions and practices is offered (see “Power-Sharing Mechanisms: A Menu of Options”, pp. 144–145).

Like any menu, levers of democratic influence can be combined to suit individual tastes. In deciding which power-sharing institutions and practices might work, there is no substitute for intimate knowledge of any given country. In multi-ethnic Fiji, for example, an 18-month expert review of the country’s political system produced a set of recommendations for a new constitution that combines measures to guarantee a minimum level of indigenous Fijian and Indo-Fijian representation in parliament (a group building-block option) with electoral incentives to promote the formation of political alliances across ethnic lines (an integrative option).

4.1.3 Promoting power sharing

Often, external parties in the international community have promoted power sharing by offering formulas – institutional blueprints for political structures – to prevent or escape ethnic conflicts. International mediators have also sought to induce the political leaders of contending groups to accept these blueprints through a combination of diplomatic carrots and sticks, such as offering aid or threatening sanctions.

For example, the United Nations secretariat has produced a “set of ideas” for a bi-zonal, bi-federal arrangement for power sharing between Greek Cypriot and Turkish Cypriot communities in Cyprus. Autonomy frameworks have been proposed to

help resolve the disputes between majority and minority communities in Indonesia (East Timor) and Sri Lanka. The peace accord for Northern Ireland sets up a number of cross-border power-sharing institutions and creates a new assembly in the disputed territory (see Northern Ireland Case Study). Each of these plans is backed by diplomatic initiatives to pledge international assistance in implementation if the parties agree to share power in parliament instead of contesting it on the battlefields or in the streets.

Increasingly, the international community is using linkages to other issues, such as membership in collective security, trade, and other international organizations, to persuade states to adopt power-sharing practices that promote ethnic accommodation. The European Union has invoked these conditionalities in its relations with some Eastern European states, such as Romania, to encourage management of ethnic-Romanian and ethnic-Hungarian differences through democratic political structures.

Promoting democratic conflict-regulating practices in this manner can be a useful tool of diplomacy to arrest the escalation of ethnic conflicts into violence or to bring them to an end after preventive efforts fail. Moreover, even when democracy may be a long way off, the international community can exert pressure for the adoption of conflict-regulating practices by non-democratic states, such as fair treatment of ethnic minorities and the creation of ethnically diverse security forces.

4.1.4 When can power sharing succeed?

Power-sharing agreements that looked good on paper have failed in recent conflict settings such as Rwanda and Burundi. In both of these countries in which majority-Hutu and minority-Tutsi ethnic groups have a history of violent strife, efforts to find solutions by creating power-sharing democratic institutions proved to be insufficient in overcoming deep distrust and the perception of mutual victimization. In both cases, the power-sharing experiments broke down and violent clashes ensued; in Rwanda, an incipient power-sharing pact was scuttled by the 1994 genocide there, a deliberate move by its perpetrators.

Similarly, before the outbreak of civil wars in Lebanon and Cyprus in the mid-1970s, these countries had power-sharing systems. Lebanon's civil war was eventually ended with a new power-sharing pact (the 1990 Taif Accord), and, as mentioned above, a revival of power sharing seems to be a preferred outcome to Cyprus's long-running communal conflict.

4.1 Power-Sharing Democracy: An Overview

Policy-makers and scholars with difficult choices in complex conflicts rightly ask straightforward questions about experiences with the various levers of democratic practice in divided societies. Under what conditions does power sharing work, and under what conditions does it fail? Under what conditions do power-sharing systems entrench group identities and collapse into violent conflict, and when do they lead over time to more pluralistic and sustainable patterns of democracy?

Naturally, there are no simple answers to the questions posed above, but some conclusions can be drawn. For power-sharing democracy to work, there must be a sufficiently strong core of moderates – including both political elites and the broader civil society – that seeks pragmatic coexistence in a multi-ethnic society. Moderates committed to sharing power in a multi-ethnic democracy must also be able to withstand pressures created by extremist politicians and publics who mobilize on divisive ethnic themes as a route to power. This critical core of moderates appears to exist in South Africa, it might exist or be created in Bosnia, and it is clearly absent in Rwanda and Burundi. Without the existence of a core of moderate voices, multi-ethnic countries are likely to succumb to inter-group violence and, potentially, state collapse or disintegration.

When a sufficiently cohesive core of moderates does exist, power sharing is a viable means of democratic conflict management. Although there is no single, transportable model of power sharing, there is a broad menu of public policies, institutions, and mechanisms to promote democracy in countries with deep-rooted identity conflicts. The actual form of power sharing (group building-block versus integrative) seems to be less important than the extent to which the agreement to create a power-sharing system is the result of good-faith bargaining and negotiation among the contending social forces. The negotiation process itself must be inclusive and legitimate.

Power-sharing systems work best when, ideally, they are a temporary measure to build confidence until more customary, sometimes-win-and-sometimes-lose democracy can be embraced. This appears to be the course that South Africa will take; its final constitution, adopted in 1996, is much more majoritarian even though minority rights are closely guarded. Whether the withering away of power sharing in a more conflicted society such as Bosnia is possible, or whether power sharing will fail leading to the country's dissolution, remains an open question. But the

POWER-SHARING MECHANISMS

POWER-SHARING POLITICAL SYSTEMS

- Decision-making ideally occurs by consensus;
- All major ethnic groups included in government; minorities, especially, are assured influence in policy-making on sensitive issues (i.e., language use, education);
- Can take two forms: *group building-block* approach and *integrative* approach.

GROUP BUILDING-BLOCK

- Ethnically homogenous groups (political parties) form building blocks of common society;
- *Key elements*: federalism and devolution of power to ethnic groups in the territory that they control; minority vetoes on sensitive issues; grand coalition cabinets; proportionality in all spheres of public life;
- *Example*: Dayton Accord for Bosnia.

INTEGRATIVE

- Political alliances across lines of conflict; thus creating incentives for political leaders to be moderate on divisive ethnic themes; and enhancing minority influence in majority decision-making;
- *Key elements*: electoral systems that encourage pre-election pacts across ethnic lines; non-ethnic federalism that diffuses points of power; public policies that promote political allegiances that transcend groups;
- *Example*: South Africa's 1993 interim constitution.

Although the following menu presents two conceptually distinct approaches, it is clear that in the real world, power-sharing options can be pieced together in a number of ways.

FIVE GROUP BUILDING-BLOCK OPTIONS

1. Granting territorial autonomy to ethnic groups and creating confederal arrangements;
2. Adopting constitutional provisions that ensure a minimum level of group representation (quotas) at all levels of government;
3. Adopting group proportional representation in administrative appointments, including consensus-oriented decision rules in the executive;
4. Adopting a highly proportional electoral system in a parliamentary framework; and
5. Acknowledging group rights or corporate (non-territorial) federalism (e.g., own-language schools) in law and practice.

FIVE INTEGRATIVE OPTIONS

1. Creating a mixed, or non-ethnic, federal structure, with boundaries drawn on other criteria such as natural features or economic development zones;
2. Establishing an inclusive, centralized unitary state without further subdividing territory;
3. Adopting winner-take-all but ethnically diverse executive, legislative, and administrative decision-making bodies (e.g., a purposefully diverse language board to set policies on language use);
4. Adopting an electoral system that encourages the formation of pre-election coalitions (vote pooling) across ethnic divides; and
5. Devising “ethnicity-blind” public policies and laws to ensure non-discrimination on the basis of identity or religious affiliation.

LESSONS LEARNED

1. For power sharing to work, there must be a strong core of moderates – both political elite and civil society – that seeks coexistence. Moderates must be able to withstand pressures by extremist politicians and publics.
2. More important than the actual form of power sharing (group building-block or integrative) is the extent to which agreement to create power-sharing system is the result of good-faith bargaining and negotiation.
3. Power-sharing systems work best when they are a temporary measure to build confidence until more permanent structures can be developed.

present alternative to power sharing in Bosnia is not “regular” or majoritarian democracy, it is the abandonment of Bosnia as a multi-ethnic country altogether. Unfortunately, this is the case in many other deep-rooted ethnic conflicts as well.

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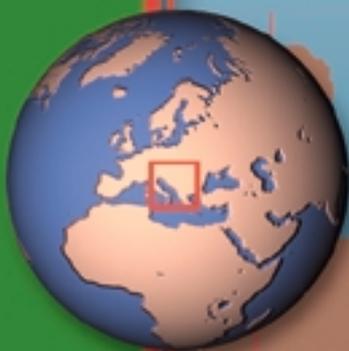
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Case Study

BOSNIA-HERZEGOVINA (Dayton Peace Map)



Case Study: Bosnia-Herzegovina

BOSNIA-HERZEGOVINA

At its simplest, the Bosnian question boils down to two issues: how 2.2 million Muslim Slavs (Bosniacs) can live amid 4.5 million Croats and 8.5 million Serbs in the wider region of the former Yugoslavia; and how 750,000 Croats and 1.3 million Serbs can live together with 1.9 million Bosniacs within Bosnia-Herzegovina (Bosnia) itself. Depending on where borders are drawn and whether they are respected, Bosniacs either form a minority squeezed between two more powerful ethnic groups, or they comprise a relative majority in a territory shared with two large minority communities, both of which consider the neighbouring states of Croatia and rump Yugoslavia (Serbia and Montenegro) their mother countries.

The current arrangement, enshrined in the Dayton Accords, is the result of three years and nine months of fighting within Bosnia – much of it three-sided – and four and a half years of warfare within the former Yugoslavia. It was reached after more than 100,000 deaths (the exact figure is not known) and the expulsion of about half of Bosnia's 4.3 million population from their homes in so-called ethnic cleansing. It was agreed between Bosnia's Bosniac President, Alija Izetbegovic, on behalf of Bosnia; Croatia's President Franjo Tudjman, on behalf of Bosnian Croats; and Serbia's then President Slobodan Milosevic, on behalf of Bosnian Serbs. And it followed several years of failed attempts by international mediators to broker an agreement; massive, belated and concerted international pressure for a settlement; and three weeks of intense negotiations at a US airforce base in Dayton, Ohio during November 1995.

Power Sharing under Dayton

Under Dayton, Bosnia is defined as a single state with three main constituent peoples – Bosniacs, Serbs and Croats – divided into two entities: the Federation of Bosnia and Herzegovina (Federation), comprising 51 per cent of the territory, and Republika Srpska, 49 per cent. Despite being one country, both entities have their own armed forces (and the Federation army is effectively divided into Croat and Bosniac forces), whose strength is regulated and related to that of the neighbouring states. The ratio between the military stockpiles of rump Yugoslavia, Croatia and Bosnia is 5:2:2, and within Bosnia between the Federation and Republika Srpska is 2:1. The country which emerged out of Dayton nevertheless inherited the political independence, territorial integrity and sovereignty of the previous state, the republic of Bosnia-Herzegovina, a former republic of the Socialist Federal Republic of Yugoslavia but internationally recognized and admitted to the United Nations shortly after the outbreak of war in April 1992.

Dayton contains 11 annexes, of which only the first concerns the cease-fire and military matters. The remaining 10 cover civilian aspects of the peace plan, including the right of displaced Bosnians to return to their homes or to be compen-

sated for the loss of their property. And the future shape of the country depends as much on the manner in which the civilian side of the peace plan is implemented, as on the political structures contained within it.

Bosnia's central institutions are weak. They are responsible for foreign policy, various aspects of foreign trade policy – including setting import tariffs (though critically not gathering the revenue) – inter-entity communications and criminal law enforcement. Other matters, including tax collection, are left for the two entities. Although the entities are able to establish “special parallel relationships with neighbouring states”, these have to be “consistent with the sovereignty and territorial integrity of Bosnia”. With the consent of the Parliamentary Assembly, the entities can enter into specific agreements with states or international bodies. The Federation may, therefore, form special links with Croatia, and Republika Srpska may form special ties with rump Yugoslavia, but neither entity can break away from Bosnia.

The Parliamentary Assembly has two chambers: the House of Peoples and the House of Representatives. The former has 15 members, five from each constituent people – 10 (five Bosniacs and five Croats) from the Federation and five (Serbs) from Republika Srpska. The Bosniac and Croat members are appointed from the House of Peoples of the Federation and the Serbs are nominated from the Republika Srpska Assembly. Nine delegates, with at least three from each community, have to be present for a quorum. The House of Representatives has 42 members, 28 of whom are elected from the Federation and 14 from Republika Srpska. A majority of those present in both chambers is the basic requirement for taking decisions in the Parliamentary Assembly. However, each constituent people has the right to declare any prospective decision “destructive of a vital interest”, in which case the proposal requires “a majority of the Bosniac, of the Croat and of the Serb Delegates present and voting”. In such a way, decisions are to be made by broad consensus and not against the declared vital interest of any community.

The “vital interest” mechanism is also a feature of the three-person Presidency. This is made up of one Bosniac and one Croat, both directly elected from the territory of the Federation, and one Serb, directly elected from Republika Srpska. Since each voter is only able to cast one ballot at the presidential level, Bosniacs effectively elect the Bosniac member, Serbs elect the Serb member, and Croats elect the Croat member. Although the Presidency should aim to reach decisions by consensus, a majority decision is possible, subject to certain limitations. In the event of a two-to-one decision, Presidency members can, in the following three days, declare a decision to be “destructive of a vital interest”, in which case the decision is referred to either the Republika Srpska Assembly or either the Bosniac or Croat members of the House of Peoples in the Federation. A vote of two thirds of the relevant group within 10 days renders the decision null and void. The Presidency appoints the government, or Council of Ministers, of which no more than two thirds of ministers can

Case Study: Bosnia-Herzegovina

come from the Federation and deputy ministers may not be of the same constituent people as the minister.

International Presence

Taken together, all these mechanisms mean that the system requires broad agreement and consensus to function. However, given the existing animosity and absence of trust, and the fact that both Serb and Croat political leaders continue to believe that union with their mother countries is a viable alternative to Bosnia, such consensus does not exist. Indeed, if left entirely up to the former warring factions, Dayton would never be implemented. The accord therefore includes provision for international involvement in all aspects of the peace process – in addition to a NATO-led peace-keeping force (initially consisting of 60,000 troops) – with overall co-ordination entrusted to a so-called High Representative, under the authority of the UN Security Council.

The Organisation for Security and Co-operation in Europe (OSCE) has a three-pronged mandate in Bosnia. It monitors the human rights situation; it oversees arms reduction; and it supervises elections. And a UN International Police Task Force (IPTF), made up of (initially 1,500) unarmed foreign police officers, assists, advises, monitors and observes the work of local police.

Foreign influence is equally crucial in a host of ostensibly domestic institutions. There is, for example, a foreign Human Rights Ombudsman who is appointed by the OSCE for the first five years of Dayton implementation; the Governor of the Central Bank is a foreigner appointed by the International Monetary Fund (IMF) for the first six years; and three out of the nine members of the Constitutional Court are foreigners appointed by the President of the European Court of Human Rights. And this massive presence is cushioned by a five-year \$US 5.1 billion reconstruction plan, designed and guided by the World Bank.

Though critical to the peace process, the scale of the international presence is in some ways counter-productive to Bosnia's long-term future. On the one hand, domestic institutions and politicians have to a large extent given up responsibility for governing their own country. On the other, the massive international stake has led key players to declare the peace process a success, irrespective of how it is actually evolving, since failure would reflect badly on those statespeople, organizations and countries responsible for the agreement. For example, elections were scheduled to take place between six and nine months after Dayton came into force and were duly held exactly nine months from the day the agreement was signed. However, even though the poll succeeded only in cementing the results of ethnic cleansing, amounting to an inaccurate ethnic census of the population where more than 100 percent of the electorate voted, the event was hailed as a "triumph of democracy". Moreover, since the poll, the ethnically based parties which dominate

Bosnian politics have refused to work together; the common institutions – whose formation was ostensibly the reason that elections needed to take place – have failed to function in a meaningful manner; and the international community, in particular the High Representative, has had to take on an increasing role, imposing solutions on recalcitrant Bosnian institutions, and even ruling on issues such as the design of the country's flag.

That the peace remains so fragile is hardly surprising, given the circumstances in which Dayton was arrived at. For the settlement was agreed by the very individuals who were responsible for the war in the first place and who were aiming, above all, to secure their own political future. Moreover, it was brokered by US diplomats, and in particular Richard Holbrooke, whose overriding concern was to stop the fighting and get events in Bosnia off the international political agenda because of the acrimony the conflict had created within the NATO alliance.

Why Dayton Worked

Dayton succeeded where earlier peace plans had failed because of the single-minded determination of the US negotiating team and the backing they received from other countries; because, after years of humiliation, there was a genuine threat that European troops (in particular British and French) who made up the backbone of the UN force in Bosnia would be withdrawn in the event of failure; and because of a fundamental shift in the military balance, which had been in part engineered by US diplomacy. In the course of 1995 the tide of battle changed, first in neighbouring Croatia and then in Bosnia. Two out of three Serb-held enclaves in Croatia were overrun in lightning strikes in May and August and, with the support of Bosnian Croat forces and the predominantly-Bosniac Bosnian Army, the offensive rolled forward into Bosnia reversing many of the early Serb war gains. Diplomatic pressure brought a halt to the offensive when the territorial division within the country corresponded to that envisaged in earlier peace plans proposed by international mediators.

Dayton was but the last in a long line of internationally brokered peace plans, one of which, the Vance-Owen plan (named after Cyrus Vance and David Owen, its sponsors) is worthy of special note. Unlike Dayton, the Vance-Owen plan attempted to build the concept of multi-ethnicity into the system throughout the country. Though it too entailed a territorial division and the creation of 10 regions – nine of which were deemed to have an ethnic majority of one people and one (Sarajevo) to be mixed – it guaranteed minority ethnic representation in each region via a complex constitutional plan designed by the Finnish diplomat Martti Ahtisaari. The Vance-Owen plan failed, however, because it did not receive international, in particular US, backing and was rejected by the Bosnian Serbs. No country was willing to risk deploying forces to reverse Serb military gains.

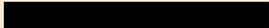
Case Study: Bosnia-Herzegovina

When war broke out in the former Yugoslavia in 1991, the international community had no choice but to become directly involved because the fighting was so geographically close to key western European countries. The former Yugoslavia borders three European Union member states and literally divides 14 of them physically from Greece. International media devoted massive attention to the conflict and hundreds of thousands of refugees fleeing the fighting began making their way to western Europe, and in particular to Germany. But without the political will to address the massive imbalance in fire-power within the former Yugoslavia and neutralize overwhelming Serb superiority, the only strategy open to international mediators was one of appeasement – determining the minimalist Serb position and attempting to persuade Croats and Bosniacs to accept it. And the minimalist Serb position essentially amounted to the construction of a Serb state comprising all territory in the former Yugoslavia inhabited by Serbs, irrespective of the wishes of the non-Serb population.

Of Bosnia's 109 municipalities, 37 had an absolute Bosniac majority, 32 an absolute Serb majority and 13 an absolute Croat majority. A further 15 municipalities had a simple Bosniac majority, five a simple Serb majority and 13 a simple Croat majority. With the exception of Croat-populated western Herzegovina, an absolute majority rarely accounted for more than 70 per cent of the population, and as often as not neighbouring municipalities had majorities of one of the republic's other peoples. Bosnia could not therefore fragment neatly along an ethnic line, because there was no ethnic line to fragment along. Dividing Bosnia into ethnic territories would inevitably be messy and require massive population transfers.

The fundamental cause of conflict in the former Yugoslavia in the early 1990s was not, however, simply the drive by the country's Serbs to forge their own national state at the expense of their neighbours. Structurally speaking, this was only a manifestation of what was and remains a much deeper-rooted problem. For as communism disintegrated in eastern Europe, the gel that had held Yugoslavia together since World War Two disappeared and the country was ill-equipped institutionally to deal with the transition to democracy. Nearly half a century of communism had failed to resolve the national question. Indeed, it may even be argued that communist rule had exacerbated the potential for conflict within Yugoslavia since, in practice, it had stifled open dialogue on ethnic issues. Moreover, the planned economy had failed to sustain prosperity and had been disintegrating throughout the 1980s.

Although Bosnians had appeared to live together in reasonable harmony before the war, ethnic identities formed over centuries of Ottoman rule – when each religious community was governed separately under its own spiritual rulers – remained strong. As a result, when elections took place in 1990, the poll approximated to an ethnic census as the electorate divided along ethnic lines. Though the ethnically based parties were ostensibly in coalition and governing together, they rapidly fell out with each other and politics descended into a “zero-sum” game, much like the



**Case Study: Bosnia-
Herzegovina**

current situation, as Serbs, and later Croats, decided that they had an alternative to Bosnia. This pattern was repeated at Bosnia's post-Dayton 1996 elections, where the major parties based their campaign almost exclusively on nationalist appeals to their own ethnic group, thus reinforcing the divisions of the war rather than encouraging politics centred on other, less damaging, issues.

■ Though it is without doubt possible to contain the Bosnian conflict almost indefinitely, this requires policing and is an extremely costly approach. Moreover, international leaders who have troops deployed in Bosnia are acutely aware of the political risks they are running domestically, should, for example, any of their soldiers be killed. In addition to containing the conflict, therefore, they are hoping to find an exit strategy. Prospects of troop withdrawal or substantial reduction are poor, however, because of instability elsewhere in the region, and in particular in Yugoslavia and the southern Balkans. Indeed, as the predominantly Albanian province of Kosovo disintegrates in ethnic violence, international involvement and presence throughout the region is expanding, not contracting. And whether in Kosovo, Macedonia or Bosnia, the fundamental problem remains of how to reconcile the legitimate interests of different communities living side by side.

4.2 The Structure of the State: Federalism and Autonomy

4.2 The Structure of the State: Federalism and Autonomy

Most solutions to internal conflicts require adjustments to the structure of the state. In this section we discuss how federalist and autonomy arrangements can help defuse tensions within a state by devolving greater powers to ethnic groups.

- 4.2.1–4.2.2 *Means of devolving power*
- 4.2.3 *Examples of federalism and autonomy*
- 4.2.4 *Legal basis for autonomy*
- 4.2.5 *Advantages of autonomy solutions*
- 4.2.6 *Resistance to autonomy*
- 4.2.7 *Structuring autonomous arrangements*

Many conflicts centre on the role of the state in society and emanate principally from its structure and organization. In most countries, the state is the most powerful organization, even when it is not very effective in implementing policy. Control of the state usually provides access to economic power since the state is the major means of the reproduction of capital. Consequently, there is strong competition for control over the state apparatus and this struggle is the cause of many of today's conflicts. These conflicts can be prevented or mediated by re-structuring of the state, or by official policies, such as re-distribution through affirmative action mechanisms, recognition of personal laws and other forms of pluralism, fairer electoral laws and forms of power sharing (these elements are discussed in other parts of the handbook).

Problems also arise from attempts to adopt symbols of the state that are rooted in the religion or traditions of one community (Sri Lanka, Malaysia, etc.) which alienate other communities. A solution might be neutral symbols (like democracy, human rights and the rule of law), secularism as a kind of state nationalism, but many leaders consider that its capacity to inspire loyalty among their supporters is limited. A more productive strategy is often to look at ways of devolving power via federalism, autonomy or other adjustments to the structure of the state.

There is strong competition for control over the state apparatus, and this struggle is the cause of many of today's conflicts. These conflicts can be mediated by looking at ways of devolving power by federalism, autonomy or other adjustments to the structures of the state.

4.2.1 Means of devolving power

There are a wide variety of arrangements for the devolution of power. In considering these options, it is important not to see them as mutually exclusive or as either/or alternatives. Given the current variations in diversity, in terms of numbers, identity and resources, within one single state some combination of devices may be required (as the Canadian and Indian experiences reveal).

Federalism. The best known arrangement is federalism, where power is devolved equally to all regions and each region has an identical relationship to the central government. While traditionally federalism has not been used to solve problems of ethnic diversity, there have been instances where federalism has proven effective. For example, the adoption of federalism in Switzerland and Canada was partially motivated by the need to accommodate diverse communities. Also, the federal device was used frequently for the settlement of ethnic problems at the end of World War Two, for example in India, Malaysia, and Nigeria. Federalism has been argued for in other contexts as well, such as during the discussions in South Africa leading to the post-apartheid settlement.

If the need is to accommodate only one or two minority groups, however, the federal model may be unnecessary. Also, the federal model may not be seen to be sufficiently sensitive to the cultural and other needs of a community. Consequently, there have been two alternative responses: *asymmetrical federalism* and *autonomy*.

Asymmetrical federalism. In an asymmetrical federation, one or more federal states are vested with special powers not granted to other provinces, to allow for preservation of the culture and language of its settlers. An old example of this is Quebec, and a more contemporary instance is Kashmir's special status within the Indian federation.

Autonomy. An autonomous arrangement, in which only one or more regions have devolved to them special powers, is more common. Autonomy tends by its very nature to be asymmetric. Examples of autonomy include: two provinces in the Philippines (the Cordillera and Mindanao), Zanzibar in relation to Tanzania, Hong Kong in relation to China, Greenland in relation to Denmark, Puerto Rico in relation to the US, the Autonomous Communities in Spain, and Åland in relation to Finland.

4.2 The Structure of the State: Federalism and Autonomy

An important distinction between federalism and autonomy is that in federations the regions participate actively in national institutions and national policy-making, in addition to controlling devolved subjects within the region. In autonomy, the emphasis is on the region's power to control its own affairs, rather than to participate in national institutions. (The case of Zanzibar is somewhat anomalous, given its influence in the national parliament and in the executive disproportionate to its size, resulting in much resentment on the mainland.)

Reserves. These were first used by European settlers in the Americas, to isolate and dominate indigenous peoples, and were subsequently used in Australia, Africa and parts of Asia. The apartheid policy of Bantustans was a modern version. In recent years, however, the aspirations and historical claims of indigenous peoples have been recognized through the transformation of reserves into self-governing areas, particularly in Canada and the Philippines. The extent, however, to which they can opt out of national laws, which may be necessary for the preservation of their political and cultural practices, is variable.

Local government institutions. Another way to devolve power is through local government institutions or forms of decentralization. These differ from federations and autonomy in that they do not have a specific constitutional status or constitutional guarantees. Local government can be an effective way to give certain powers to a group since the geographical scale of local government is small and the population is likely to be homogeneous.

The developments regarding federalism and autonomy outlined above greatly increase the possibilities of devising flexible arrangements for forms of self-government to suit widely varying circumstances and contingencies. (In this section autonomy is frequently used in its generic sense to include all forms of spatial arrangements for self-government.) Added to these broad categories of self-government are variations in arrangements within each category, such as the division of powers between different layers and structures of government, the relationship between these structures at different levels, and the distribution of financial and other resources. While this flexibility is important in the negotiation process and facilitates compromises, there is a danger that it may lead to complex arrangements and systems, leading to a lack of cohesion and governability. Federal or autonomy arrangements are inherently hard to operate, and the embroidery on classical systems that tough negotiations may lead to can undermine long-term prospects of settlement by their sheer

weight or complexity (a good example of this experience are the regional arrangements in Kenya's independence Constitution, and more recently of Papua New Guinea's system of provincial government established in 1976).

4.2.2 *International regional organizations*

A new but uneven element in the spatial organization of government is the emergence of *international regional organizations* in which national sovereignty has been traded for a share in the participation and decision-making in these organizations. Common policies over larger and larger matters are determined by such organizations. In this way a measure of control over the affairs of a national region has been transferred from national to supranational authority. This diminution of national sovereignty opens up possibilities of new arrangements between the state and its regions. The benefits work both ways: the state feels less threatened by regions in a multi-layered structure of policy-making and administration; and the region becomes more willing to accept national sovereignty, which may be the key to its participation in the wider arrangements.

This trend is most developed in the European Union, where it is helping to moderate tensions between states and border regions previously intent on secession. For example, it has facilitated the interesting spatial arrangements for policy, administration and consultation in the two parts of Ireland, each under separate sovereignty, which underlie the new peace proposals (see Northern Ireland Case Study). Attempts to provide for unified Nordic arrangements for the Saami people, including a substantial element of autonomy, regardless of the sovereignty they live under, are another instance of similar kind.

4.2.3 *Examples of federalism and autonomy*

While, traditionally, federalism has not been used to deal with ethnic issues, there are nevertheless several examples of how federal and autonomy devices have helped to mitigate or even solve internal conflicts or have provided a basis for the peaceful co-existence of diverse communities. A particularly successful example of autonomy is Åland, where a predominantly Swedish-speaking population under Finnish sovereignty has enjoyed a large measure of cultural and political autonomy since 1921. Autonomy has diffused ethnic tensions between Italian- and German-speaking people in South Tyrol. Many of India's ethnic demands have been dealt with in this way, starting with the re-organization of states along linguistic lines in 1956, and the subse-

4.2 The Structure of the State: Federalism and Autonomy

quent divisions of the former Punjab and Bombay and the accommodation of Assam, Nagaland, and Mizoland as states.

The transition to democracy in Spain after the overthrow of Franco was greatly facilitated by the provision in the 1978 Constitution for the establishment of “autonomous communities”. By giving “historic” communities, like the Basque and Catalans, a large measure of self-government, pressures for secession were reduced and terrorist activities consequently declined. In the Philippines, Muslim secessionist activity in Mindanao, lasting for a quarter of a century, has been abated due to an agreement in 1996 between the Moro National Liberation Front and the government. Under this agreement a council will be established under the chair of the leader of the Liberation Front to supervise development of 14 provinces in southern Mindanao island (regarded by it as traditional Muslim homelands), followed by a plebiscite and regional autonomy three years later. There are many lesser-known examples from the South Pacific where autonomy helped to bring disputes to some settlement (prominently the 1975 differences between Papua New Guinea and Bougainville and the francophone claims in Vanuatu).

A novel form of autonomy is represented by the arrangements under which Hong Kong returned to Chinese sovereignty in July 1997 (which Deng Xiaoping claimed had the potential to solve many world problems). Its novelty lies in the arrangements for the coexistence of very different, and in many respects opposed, systems of economy and politics within one sovereign state. Britain was prepared to return Hong Kong to China only on the basis of promises of Hong Kong’s autonomy as set out in the 1984 Sino-British Joint Declaration. Macau’s return to China in 1999 is based on similar principles.

More importantly, China is pursuing reunification of Taiwan with the mainland on the same policy of “One Country, Two Systems”. It is likely that when serious negotiations between the two sides get under way, the principal issue will be the scope and modality of Taiwan’s autonomy. Currently there are attempts to solve internal conflicts through autonomy arrangements, such as Sri Lanka-Tamils; Indonesia-East Timor; the Sudan-Southern Sudan; Georgia-Abkazia; and although not a conflict situation, the future relationship between the US and Puerto Rico.

Autonomy is often claimed by the disaffected group: white settlers and minority tribes in Kenya; kingdoms in Uganda; islands in Papua New Guinea, Tamils in Sri Lanka and so on. But sometimes the government offers autonomy as a way to fend off

secession or bring armed struggle to an end, as in the Philippines for Mindanao, north-east India, Palestine, Spain, or belatedly in Sri Lanka. The Indian National Congress, for example, was prepared to countenance a high degree of autonomy if the Muslim League accepted a united India; but once partition was declared by the British, it argued successfully for a strong central government, with weak states.

4.2.4 *The legal basis for autonomy*

Despite the increasing use of autonomy solutions, the legal bases for autonomy remain unclear. There are two principle bases for autonomy:

Minority rights. In recent years, the United Nations has shown more interest in minority rights. It has adopted a *Declaration on the Rights of Minorities* which goes further than Article 27 of the International Covenant of Civil and Political Rights in protecting minority rights (see “Human Rights Instruments” section 4.6.3). In addition, the UN Human Rights Committee has adopted some interpretations of Article 27 that recognize that a measure of autonomy may be necessary for the protection of cultural rights of minorities. Efforts have also been made by that committee and others to interpret the right to self-determination to mean, where relevant, “internal autonomy” rather than secession. The approach of the OSCE (in its various declarations as well as in practice) favours autonomy regimes, and its rules for the recognition of breakaway republics of Yugoslavia included adequate minority protection of this kind. The new *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (1991) and the draft declaration of the rights of indigenous peoples have endorsed autonomy regimes.

Self-determination. In itself a difficult and controversial concept, self-determination is increasingly being analysed in terms of the internal, democratic organization of a state rather than in terms of secession or independence. The UN General Assembly resolved many years ago that autonomy is a manifestation of self-determination. The increased involvement of the UN and other international organizations in the settlement of internal conflicts has helped to further develop the concept of self-determination as implying autonomy in appropriate circumstances.

Such a view of self-determination has some support in certain national constitutions, but it is no more than a trend at this stage. Often constitutional provisions for autonomy are adopted during periods of social and political transformation, when an

4.2 The Structure of the State: Federalism and Autonomy

autocratic regime is overthrown (when there is considerable legitimacy for autonomy) or a crisis is reached in minority-majority conflicts, or there is intense international pressure (in which case legitimacy is often granted rather grudgingly). Propelled by these factors, a number of constitutions now recognize some entitlement to self-government, such as the Philippines (in relation to two provinces, one for indigenous people and the other for a religious minority); Spain (which guarantees autonomy to three regions and invites others to negotiate with the centre for autonomy); Papua New Guinea (which authorizes provinces to negotiate with the central government for substantial devolution of power); Fiji (which recognizes the right of indigenous people to their own administration at the local level); and recently Ethiopia (which gives its “nations, nationalities, and peoples” the right to seek wide ranging powers as states within a federation and guarantees to them even the right to secession). The Chinese Constitution entrenches the rights of ethnic minorities to substantial self-government, although in practice the dominance of the Communist Party negates their autonomy. In other instances the constitution authorizes, but does not require, the setting up of autonomous areas. On the other hand, it should also be noted that some constitutions prohibit or restrict the scope of autonomy by requiring that the state be “unitary”, or some similar expression; such a provision has retarded the acceptance or the implementation of meaningful devolution in countries such as Sri Lanka, Papua New Guinea and China.

The presence or absence of an entitlement in either international or national law to autonomy, as well as provisions limiting its scope, can play an important role in the conduct of negotiations and the relative bargaining position of parties, especially when there is international or third-party mediation.

4.2.5 *The advantages of federalism and autonomy solutions*

There are several advantages to federalism and autonomy mechanisms:

It ensures minorities a measure of state power. Minorities can enjoy executive, legislative and fiscal powers, not merely parliamentary representation with little prospect of a share in policy-making or distribution of resources.

It offers minorities better prospects of preserving their culture. Enabling minorities to make important decisions for themselves almost always offers better prospects for their own cultural preservation.

It may forestall or terminate demands for secession. The flexibility of the federal device in terms of the division of powers and the structure of institutions enables various kinds of accommodations to be made; it is more hospitable to compromise than other kinds of minority protection.

It can increase the political integration of ethnic groups. Autonomy devolves power to the state, which increases opportunities for people to compete in the political system; this political competition can, in turn, accentuate differences within groups, which can lead to the fragmentation of previously monolithic ethnic parties. The proliferation of parties enables coalitions of similarly situated ethnic parties (i.e., in Nigeria and India) across the state. Local problems that might otherwise have created a national crisis are dealt with by the locality itself. Territorial asymmetrical arrangements encourage demands for similar arrangements by other groups (India, Nigeria, and Papua New Guinea). The proliferation of these arrangements increases the prospects of national unity as it diffuses state power and enables central authorities to balance regional with national interests.

It can contribute to constitutionalism. Autonomy arrangements, and the mechanisms to enforce them, emphasize the rule of law, the separation of powers, and the role of independent institutions. The institutionalization of autonomy, particularly procedures governing the relationship between the centre and the region, must be based on discussions, mutual respect and compromise, thereby reinforcing and strengthening these qualities.

Autonomy enables ethnic problems to be solved without “entrenching” ethnicity, since its focus is on defining a region as a geographic entity and not as an ethnic entity. However, some forms of autonomy may indeed entrench ethnicity, as in the case of reservations where the cultural dimensions and the need to preserve the identity of the group may serve to sharpen boundaries against outsiders. An important qualification on the autonomy device is that it can operate only when a minority is concentrated geographically *and* is a majority in that area. One solution to the lack of geographical concentration is a kind of corporate federalism which can take various forms – the millet system used in the Ottoman Empire, Fijian system of native administration, Indian system of personal laws, consociationalism in Cyprus at the time of independence and now in Belgium. Aspects of this solution are discussed in sections 4.1 of this handbook.

4.2 The Structure of the State: Federalism and Autonomy

Even if autonomy solutions do not last, an end to hostilities provides breathing space. It is also important to recognize that even when agreement is reached on autonomy, the end of tensions or hostilities does not mean that tensions will not resurface, or that one party or the other will not subsequently repudiate or redefine the autonomy arrangements. This happened in many parts of Africa where some measure of regional autonomy was seen as a pre-condition of independence (as in Uganda, Kenya and Ghana). There are many other examples where federal or autonomy arrangements did not last (as in the Sudan, Eritrea and de facto in Kashmir).

However, even where the arrangements do not last or tensions re-emerge, the end of hostilities provides a breathing space, helps to define issues and points of difference, and may even provide the framework for negotiations in the future. The last point can be important since a frequent problem in many ethnic conflicts is finding a framework, and even sometimes parties, for negotiations (as in Sri Lanka, Punjab or Kashmir; India has managed to defuse some of its ethnic problems by providing for elections to provincial or assemblies in the “hill areas” before the start of negotiations). The party that wins also claims a mandate to negotiate (as with the 1996 elections in Kashmir). Sometimes merely the commitment to consider autonomy can serve to defuse tensions, as in South Africa where the agreement to consider a “white homeland” secured the participation of hard-line Afrikaners to the interim constitution.

4.2.6 *Resistance to federalism and autonomy*

Despite these obvious advantages, there has been resistance to the adoption of autonomy in cases of internal, particularly ethnic, conflicts. It involves the restructuring of the state and requires the redistribution of its resources, which upsets vested interests. Consequences can include:

Majority leaders fear losing electoral support. The leaders of the majority community may be reluctant to concede autonomy, fearing the loss of electoral support among their own community (a problem that has bedevilled Sri Lanka). Majority leaders, even if well disposed to autonomy, may not have the confidence that they would be able to implement the autonomy agreement, especially if it requires amendment of the constitution, a referendum or even merely fresh legislation.

Fears that autonomy will be a spring board to secession. This is seen to be an especially serious problem when the group

demanding autonomy is related, and contiguous, to a neighbouring kin state. Autonomy granted to a minority in its “homeland” may in turn create new minorities (as with Muslims in northeast Sri Lanka which the Tamil Tigers want under their control, or Christians in Mindanao, or the fear that Malaysian Borneo states may get too close to Indonesia). This may trigger demands for autonomy by the “new minorities” and lead to further fragmentation of the state. There may also be anxiety that the fundamental values of the state may be compromised by the recognition through autonomy of different cultural or religious values. There may also be a concern with economic and administrative efficiency that is frequently seen to be jeopardized by complex autonomy arrangements.

Unpredictability of its consequences. The adoption of the federal device changes the context of ethnic relations. Territorial or corporate federal arrangements are not purely instrumental. Merely by providing a framework for inter-ethnic relations, they affect and shape these relations. They may fashion new forms of identity or reinforce old identities. They may enhance or decrease the capacity of particular groups to extract resources from the state. They may provide new forms of contention and dispute.

May encourage other communities to mobilize for autonomy. Connected with the preceding point is the fear that if autonomy can be justified on ethnic grounds, the rules justifying the granting of autonomy (identity, a sense of discrimination/injustice) may encourage the mobilization of other communities along ethnic lines, indeed to manufacture “ethnic communities”.

Autonomy arrangements for ethnic coexistence have not worked. The reluctance towards autonomy may be reinforced by a sense that autonomy arrangements for the purposes of ethnic coexistence have not worked. There are certainly many examples of failure, abandonment of autonomy, and attempted and even successful secession on the back of autonomy (as was demonstrated by the break-up of the former Yugoslavia). Even if such drastic consequences are not envisaged, there may be reluctance on the basis that the relevant political culture is alien to habits of consultation and compromise necessary for success.

4.2.7 Structuring autonomy arrangements

All of these are legitimate concerns. But they do not dictate the conclusion that autonomy should not be used to deal with ethnic conflict. What is necessary is to structure autonomy arrangements so as to increase the advantages and minimize the dis-

4.2 The Structure of the State: Federalism and Autonomy

advantages of autonomy. Below we outline some of the considerations relevant to the design of autonomy. But before that, we make three preliminary points. First, the concept of “success” of autonomy is itself problematic, since there is no clear consensus on the criteria. Second, it is difficult to isolate general factors that affect the operation of autonomy (e.g., a downturn in the economy) from factors that are specific to it. Third, autonomy is a *process* and there are inevitably changes in the context in which it operates, even in the original aims of autonomy. Options for structuring autonomy arrangements include:

Establish autonomy once and for all or through a phased, negotiating process. A choice has to be made between agreeing at one go on all the details of the autonomy system or to establish them through a series of phased negotiations. A middle ground is one where broad principles for autonomy are specified. Each option has its advantages and disadvantages and what is an optimum decision depends on the circumstances of the case. It is desirable to agree on the fundamental principles at least to start with. Experience in several countries has shown that matters left for future settlement are hard to negotiate successfully as immediate pressures, and a sense of urgency, abate. The opponents of autonomy have time to regroup. On the other hand, agreements made in rush without time for proper evaluation of alternatives may contain flaws.

In this context, some mechanism should be set in place to ensure that autonomy arrangements are implemented. Courts can play a role in certifying that the necessary arrangements have been legislated and implemented. Special political or administrative bodies can be set up to oversee the implementation process. Sometimes international supervision or conditionalities can be provided to ensure implementation (as with the Dayton Accord or the Paris Cambodian Accord).

The importance of the procedure. Autonomy established without adequate consultations tends to be controversial and lacking legitimacy. Many systems of autonomy imposed as part of the constitutional settlement at independence were dismantled soon afterwards at the instigation of the majority community. Autonomy may also affect relations in the relevant region and may be internally opposed by significant groups. In principle it is desirable that there should be wide consultations and referendums on autonomy proposals. Several national constitutions which provide for autonomy require that they be approved in a referendum (e.g., Spain, Ethiopia, and in an indirect form, Papua

New Guinea). Occasionally there is a requirement for constituent assemblies, which provide the mandate for negotiations.

While all these methods legitimize autonomy arrangements, there is also the danger that in a nation-wide referendum the proposal would be defeated if the majority community is opposed. Sometimes it is necessary to strike a fine balance between decisions by political leaders and the people.

Degree of entrenchment. Whatever method is used to arrive at decisions about autonomy, it is important that there should be firm legal guarantees for it. In particular it should not be possible for central authorities to unilaterally change the rules regarding autonomy. When the central government can change the rules on its own, the incentives for it to consult with regions diminish and mechanisms for developing consensus do not operate well.

Methods of dispute settlement. In principle the methods of dispute settlement should combine efforts first at consultation and mediation, and if that fails, judicial intervention. If the methods of settlement are impartial and accepted as such by both parties, it is possible to operate on the basis of broad principles (as has been possible in Spain); otherwise there would be pressures towards specification of details tending towards a rigid structure.

Consultative mechanisms. It is useful to provide for mechanisms for consultation between the centre and region/s, in part to avoid litigation, but also in recognition of the dynamics of autonomy. However serious an effort is made to separate off the areas of responsibilities between the centre and the region, there is likely to be some overlap as well as the need for co-ordination.

Problems with asymmetry. A particular problem with asymmetry is that all regions aspire to the completeness of powers that the best placed region has, while that region wants to keep its pre-eminence, as is evident from the experiences of Bougainville, Quebec, the Basque region and Catalonia. This can produce resentment against the privileged region in other parts of the country and put in some jeopardy its status (as with mainland resentment at the special powers of Zanzibar).

Protection of rights. Another problem with asymmetrical autonomy, especially that based on cultural differences, is that the community or region may be allowed to opt out of standard

4.2 The Structure of the State: Federalism and Autonomy

human rights provisions. This is most dramatically manifested in the “notwithstanding” clause of the Canada Charter of Human Rights under which a province can pass legislation in contravention of the Charter by making an express declaration to that effect – a concession at the instance of Quebec. Another example comes from the regime of personal laws in India where Muslim divorced women are subject to *sharia* for the purpose of maintenance from their previous husband instead of the more favourable provisions under the national laws. Problems of differential treatment arise even more extensively in regimes for indigenous peoples.

These provisions can also affect the rights of citizens outside the community. They can be subject to restrictions that do not apply to “locals” of the region (with respect to residence or employment, for example). New minorities that result from the conferring of autonomy on a region may need protection against victimization. The interests of the new minority can be secured through a further tier, that of local government (where they constitute a majority), or through special responsibilities of the central authorities.

Provisions recognizing differential values undermine the basic rights of individuals or groups within the community and cause resentment among the rest of the population. Thus autonomy can become a source of conflict rather than a solution to it. If too much importance is placed on accommodating differences and too little attention is given to building on those traditions, values and aspirations which a people share, it can lead to further fragmentation and weaken the sense of solidarity. While acknowledging cultural differences and sensitivities, it is important to emphasize national values and ensure the protection of human rights to all persons.

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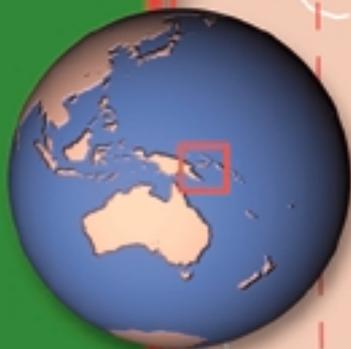
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Case Study

BOUGAINVILLE



Case Study: Bougainville**BOUGAINVILLE**

The almost 10-year old ethno-nationalist conflict in Bougainville – the most serious conflict in the Pacific island states in the 1990s – made significant progress towards peace in 1997–1998. The Bougainville conflict has had international repercussions, affecting Papua New Guinea’s relations with its neighbours, especially the Solomon Islands and Australia, and involving the region in several attempts at conflict resolution. At the heart of the conflict lies the demand for independence made by the Bougainville Revolutionary Army (BRA), a demand opposed by Papua New Guinea and by many Bougainvilleans, including “resistance forces” armed by the government.

Background

Independent from Australian colonial control since 1975, Papua New Guinea (PNG) has a population of about four million people, occupying the eastern half of the island of New Guinea and many smaller islands. The province of Bougainville (population about 170,000) is the most distant from the mainland capital of Port Moresby, about 1,000 km to the east. Before the conflict, Bougainville’s substantial initial contribution to the national economy was disproportionate to its small size, due to the enormous copper, gold and silver mine at Panguna on the main island which was operated by Bougainville Copper Ltd. (BCL) from 1972 until 1989.

Papua New Guinea is a country of immense ethnic diversity (it has more than 800 distinct languages, to cite just one example). Bougainville fits this pattern: it has 19 main languages and a population divided into numerous small semi-traditional societies. Bougainvilleans share a strong sense of a separate ethnic identity based on distinctive black skin colour and traditional affinities with the neighbouring Solomon Islands rather than with the rest of Papua New Guinea. Widely shared grievances about both the imposition of colonial boundaries and alleged colonial neglect have contributed to the sense of separate identity.

From the mid-1960s, a new grievance energized the emerging Bougainvillean identity: the imposition of the Panguna mine for the economic benefit of PNG despite detrimental effects on the Bougainville environment and people, and with limited fiscal benefits for the province. Distinct identity and grievances about the mine were factors in the attempted secession of Bougainville in 1975–1976. This was resolved peacefully by national government concessions, which gave Bougainville an effective and relatively autonomous provincial government; this was suspended, however, in 1990.

Rapid economic and social change resulted in major differences in regional economies within Bougainville, and significant economic inequality. Limited secondary education and employment opportunities produced a large pool of under-educated, under-employed and resentful youth. Many Bougainvilleans blamed the

new economic inequalities on the mine operator, BCL, and the influx of non-Bougainvilleans attracted by employment with the mine and on plantations. Outsiders were also blamed for escalating social tensions and law and order problems. These tensions contributed to the eruption of secessionist conflict in 1988–1989.

Conflict Analysis

In 1988, an inter-generational dispute among landowners around the mine led to attacks on BCL property by young men from local landowner groups led by Francis Ona. They demanded the closure of the mine and massive compensation. Poorly judged and ill-disciplined responses by police and, later, the Papua New Guinea Defence Force (PNGDF), resulted in deaths and injuries for many Bougainvilleans and provoked demands for Bougainville independence. As a result, Ona's Bougainville Revolutionary Army (BRA) was able to transform the localized conflict into a wider ethnic uprising. Ona's support came from under-employed youth in many parts of Bougainville.

As the situation slipped out of control, the mine was forced to close in May 1989. All government authority collapsed. A cease-fire and withdrawal of the PNGDF was negotiated, but instead of disarming and negotiating as agreed, the BRA tried to take control. They made a unilateral declaration of independence in May 1990 and appointed the Bougainville Interim Government (BIG), which included some former provincial government figures.

Once the security forces left, the focus of the BRA groups became their perceived enemies *within* Bougainville. The BRA was a loose coalition of semi-independent groups of mainly young men, each group based in its own semi-traditional society, often with differing perceptions of the conflict. Bougainvilleans with wealth, education or status, and many non-Bougainvilleans were harassed, imprisoned, tortured or murdered. Ona developed and propounded an ideology based in part on a return to traditional society and rejection of outside influences.

Armed opposition to the BRA emerged in Buka, north of the main island of Bougainville. Local leaders there requested national government intervention, and after some violent clashes with the BRA late in 1990, government forces took control of Buka. At the invitation of local leaders, government forces returned relatively peacefully to the north and south-west of the main island in 1991–1992. New local governments ("interim authorities") drawing mainly on traditional leadership were also established in those areas.

Armed opponents of the BRA and surrendering BRA elements formed "resistance forces" which received material support from the PNGDF and gave it active support. Bougainville became an increasingly violent place as the BRA, resistance forces, armed criminal groups and – on occasion – PNGDF elements became embroiled in conflict over mainly localized issues, often resulting in spirals of revenge killings.

Case Study: Bougainville

Following national elections in mid-1992, a new PNG government encouraged military initiatives, most notably efforts to re-take the area around the provincial capital and the Panguna mine. Violence elsewhere was escalating as the BRA sought to consolidate its position in areas to which the PNGDF had returned, and resistance groups were also operating. Some Bougainvillean leaders and local associations (especially women's organizations) became increasingly aware of the need to bridge the gaps among themselves if there was to be progress to peace.

Finally in September 1994, the PNG Prime Minister established negotiations in the Solomon Islands. Agreement was reached on a cease-fire, and on the holding of a peace conference, with security to be provided by a South Pacific regional peace-keeping force. When, for some reason, the senior BIG/BRA leaders did not attend the peace conference, the resulting popular frustration led to the emergence of a strong moderate movement in much of the area of BRA core support in central Bougainville. Within weeks the moderates proposed an interim provincial government to act as an umbrella for "moderate" groups (those opposed to secession) and as a bridge to the BIG/BRA, and to negotiate a new political status for Bougainville. The new government – the Bougainville Transitional Government (BTG) – was established in April 1995.

Some in the national government were suspicious of the BTG, afraid it was a "Trojan horse" for the BRA. Building understandings with the BIG/BRA leaders was slow, and the national government had little patience. It did agree to meetings between the BIG/BRA and the BTG in Australia, but became increasingly suspicious that the two groups were becoming too close. In January 1996, as BIG/BRA leaders returned from the talks in Australia, they were attacked by PNGDF troops. The BRA retaliated, and the national government lifted the cease-fire. Both sides now committed themselves to force. The PNGDF launched major military operations against the BRA in mid-1996. Their failure, and subsequent massacres and hostage taking of security personnel, underlined the inability of the security forces to defeat the BRA. Desperate for clear progress towards resolving the conflict prior to impending national elections, in January 1997 the government engaged mercenaries who began to train with the PNGDF Special Forces Unit, intending to crush the BRA and capture the Panguna mine site. But in a surprise move, the PNGDF commander announced the refusal of his forces to work with the mercenaries. They were ejected from the country and the Prime Minister and two key ministers were forced to stand down during a judicial inquiry.

The Conflict Management Process

Interest groups and the issues that divide

The wide range of groups with interests in the conflict or its outcomes include: the BIG/BRA; the BTG; the resistance forces; other less organized Bougainvillean interests; the national government; and other governments in the region.

The key issues include: the future political status of Bougainville and the method (and timetable) to decide it; interim arrangements for the governing of Bougainville in the period before the political status issue is determined; the presence of PNG security forces in Bougainville; arrangements for the disarming of the BRA and the resistance forces and restoration of civilian law; the future development of Bougainville; and the possible re-opening of the Panguna mine.

In Bougainville, three main parties are involved directly in the peace process, a range of interests and localized groups existing within each of them. The BRA and the BIG are concentrated in central and south Bougainville, but with some elements in most parts of the main island of Bougainville. The “hard-line” leadership under Ona is not prepared to negotiate anything other than independence. But during 1997, war-weariness and dissatisfaction with Ona’s radical prescription for future development of Bougainville have enabled a relatively moderate leadership to emerge, willing to engage in an open-ended peace process involving other Bougainvillean groups and the national government.

With members from all parts of Bougainville, the BTG provides a focus for Bougainvillean leadership prepared to negotiate special political status for Bougainville within PNG. They include both those with sympathy for the BRA’s aspiration for independence but who believe a compromise is needed to end the suffering of ordinary people, and those who are vehemently opposed to the BRA. In general, though, the BTG acts as a bridge between the national government and the BIG/BRA. As such, it tends to be suspected by both sides. The resistance forces constitute a third major group. While represented in the BTG, they have quite distinct structures and interests, in large part related to their combat roles, control of weapons and links to the PNGDF. A complex web of other Bougainvillean interests exists, including armed criminal groups; traditional leaders; women’s organizations; churches; secular NGOs; and Bougainvilleans living elsewhere.

At the national government level, numerous ministers and government agencies have roles in the conflict, and conflicting agendas abound. At the international level, Australia has strong political and economic links with PNG, including support to the PNGDF during the conflict, while in the Solomon Islands, there is considerable sympathy for the cause of Bougainville independence.

Through most of the conflict, few democratic political institutions have functioned. Bougainville has elected national parliament members in the 1992 and 1997 elections, but they have all been based in the national capital, and have had limited roles in local politics. Provincial and local governments ceased operating in 1990. Since then, traditional leaders have provided local-level government in both government-controlled and BRA-controlled areas. They have strong legitimacy, reflecting a widespread popular concern for strengthening traditional authority as a means of re-establishing social control. The BTG comprises mainly members elected indirectly by such local government bodies.

Case Study: Bougainville

Peace-making initiatives

Several sets of negotiations between the national government and the BRA occurred but failed between 1988 and 1994. These efforts failed for a number of reasons: (a) the lack of trust between the main parties resulted in unrealistic assumptions; (b) each side tended to be confident of ultimate success, so contacts between them were often directed at seeking short- to medium-term advantage rather than conflict resolution; (c) differences in understanding about what actually was agreed prevented implementation of some agreements; (d) divisions within particular parties were also a factor, with concessions made by moderate negotiators being subsequently disowned by more hard-line groups.

But after the ejection of the mercenaries and the resignation of the prime minister in March 1997, conditions became conducive to progress. First, more than eight years of conflict had created deep war-weariness and leaders of all main groups were feeling popular pressure for progress towards peace. Second, the actions of the PNGDF in ejecting the mercenaries created more room on all sides for moderate leadership. Third, all parties were conscious of a military stalemate. Fourth, at the national level, the new government were willing to examine moderate alternatives. Fifth, New Zealand emerged as an independent facilitator. Sixth, a newly elected Solomon Islands government favoured resolution of the conflict.

From April 1997, the BTG and BRA/BIG started making direct contact for the first time since 1995. The New Zealand government hosted talks at Burnham military barracks outside Christchurch on New Zealand's south island in July, involving about 70 persons from all main groups. Francis Ona was absent, but key BRA/BIG leaders in attendance used his absence to build a coalition of "moderate" interests.

The resulting Burnham Declaration committed the Bougainvillean leadership to peaceful resolution of the conflict. Four developments at Burnham were crucial. The first was the development of trust and understanding among the divided Bougainville leadership. Second, New Zealand played a key role as neutral facilitator. Third, the timing of the Burnham meeting was fortuitous in building momentum for support for a negotiated settlement among the diverse elements of the PNG government. Fourth, the focus of the meeting was on process rather than outcomes, establishing a process for achieving peace while putting outcomes on the main divisive issues to one side. In past negotiations, efforts to address the key questions of the long-term political status of Bougainville and the BRA/BIG demand for immediate withdrawal of the PNG security forces had resulted in impasse. The focus on process meant that the Burnham Declaration was deliberately vague on the divisive issues.

The Burnham meeting agreed that Bougainvillean delegations should soon meet with PNG officials to plan a major leaders meeting. The meeting with officials was held in October 1997, again at Burnham. It involved over 80 Bougainvilleans, about

20 PNG representatives, and six observers from the Solomon Islands government, including a cabinet minister who ultimately chaired the meetings. Leaders of most BRA “companies” and resistance forces elements attended. Remarkable progress was made at this “Burnham II” officials meeting. The emphasis continued to be on process, leaving outcomes on the most contentious issues to one side. However, contrary to expectations, a “Burnham Truce” was signed.

The Truce was monitored by a multinational unarmed monitoring group under New Zealand leadership and was in place by December 1997. New Zealand, Australia, Vanuatu and Fiji provided the personnel. The truce provided public education about the accelerating peace process, while also providing security for organizing reconciliation ceremonies at the local level, and for organization of the forthcoming leaders meeting. The dramatic progress was welcomed by almost all sides except Ona, who consequently became increasingly marginalized.

The leaders meeting was held at Lincoln University in New Zealand in early 1998, attended by PNG, New Zealand, Australia, Solomon Islands and other Pacific Island states, and representatives of most Bougainvillean interest groups. The meeting produced the “Lincoln Agreement on Peace, Security and Development on Bougainville”. The emphasis was still on process, but there was some progress towards agreement on some of the major issues. A permanent cease-fire was agreed. To operate from May 1998, it was to be monitored by a further regional monitoring group with involvement of a UN observer mission. An elected “Bougainville Reconciliation Government” was to be established by the end of 1998. Provision was also made for withdrawal of the PNGDF, subject to the restoration of civil authority. Disarming of the BRA and other Bougainville groups was agreed, although no modalities were provided.

Some implementation of the Lincoln Agreement has occurred, notably with the cease-fire agreement coming into effect on 1 May, and the Truce Monitoring Group under New Zealand leadership becoming a Peace Monitoring Group led by Australia. There has been some progress towards developing civilian policing arrangements. There has been no progress towards establishing the Bougainville Reconciliation Government or disarming, in part because Ona has opposed the cease-fire, and thereby made it difficult for the moderate BIG/BRA leadership to be seen to make too many concessions prior to the leaders meeting expected in June.

Competition for power has been increasing. Both the BTG and the BIG recognize that ultimately there will need to be an elected Bougainville government. There are concerns, however, that it could be difficult to hold full elections without first making considerable progress on existing divisions and outstanding contentious issues. Many BIG/BRA leaders tend to favour a referendum on the question of independence. But that may cause major problems: campaigning could divide people still further.

Case Study: Bougainville

Ongoing issues

The peace process has not yet touched upon some significant issues. In particular, the question of the future development of Bougainville divides participants. Hard-line BRA elements favour a highly egalitarian society based largely on tradition. More moderate BRA/BIG leaders support a more open society, as do BTG and most other Bougainvillean leaders. However, many otherwise “moderate” Bougainvillean leaders also agree future economic development should be controlled by Bougainvilleans, and that there should be limited freedom of movement into Bougainville for other PNG citizens.

In general the BRA/BIG opposes any future mining or mineral exploration in Bougainville. Many Bougainvilleans support that stand. But there are moderate leaders who privately believe that an independent Bougainville will need mining revenue to develop, and would support re-opening the mine under local control, on fairer terms to landowners and with far greater environmental protection. Although new mining, petroleum and gas projects elsewhere have more than made up for the loss of revenue from Bougainville, there are national politicians keen to see mining activity renewed there.

Bougainville remains deeply divided, and hard-line BRA elements who are still outside the process, or future disagreement within the process, could de-rail progress. Nevertheless, progress in the year to June 1998 has been remarkable. The provision of the unarmed truce monitors has been of central importance in providing security for the process, giving participants confidence to continue. The focus on process rather than outcomes has been crucial in engaging a wide range of leaders in a long-term process where trust can be developed, to enable compromises to emerge. Future progress will depend on keeping them engaged in the process.

Lessons from the Bougainville Conflict Management Process

Some aspects of the Bougainville conflict management process may be of wider application.

- First, in a complex divided situation as in Bougainville, while it may be tempting for a national government embroiled by ethnic conflict to exploit divisions among its potential opponents, the danger is that those divisions themselves become a major obstacle to resolution of the conflict. Processes developed by Bougainvilleans have been crucial foundations for all subsequent progress. This highlights the importance of the national government permitting room for such local involvement.
- Second, conditions which have encouraged the emergence of moderate leadership on both sides have been vital.
- Third, Bougainville demonstrates that a military stalemate offers opportunities for making progress in conflict resolution.

Case Study: Bougainville

- Fourth, changes of government offer opportunities as new leadership seeks to distance itself from past policies, or seeks to make political capital from progress in resolving the conflict.
- Fifth, neutral outsiders such as foreign governments can play useful roles in creating conditions amenable to negotiations.
- Sixth, there are both advantages and problems inherent in a conflict management approach that focuses on process rather than outcomes. The obvious advantage is that it creates opportunities for building trust and understanding between the parties and engaging them in a process, which they may have difficulty walking away from. The main problem is that at some point the question of outcomes must be addressed. If this is done too early, tensions between and pressures on the parties may be so great that the whole process will be aborted. One solution is to negotiate a process where the key issues are addressed at a later date. In Bougainville, that might be done by establishing a highly autonomous Bougainville government in which all Bougainville factions can participate, whilst postponing a decision on the question of independence.
- Seventh, there may be dangers in pressures for democratization of the conflict resolution process, through acts of self-determination or establishing of elected institutions. In situations where parties are deeply divided, such processes and institutions may themselves exacerbate tensions and conflict.

4.3 Executive Type: Presidentialism versus Parliamentarism

4.3 Executive Type: Presidentialism versus Parliamentarism

There are essentially three options for constituting an executive government: one based on a parliamentary system, one based on a presidential system, and one based on some combination of the two (sometimes called semi-presidentialism). This section analyses the major competing arguments in favour of and against these three choices.

4.3.1 Parliamentary systems: advantages and disadvantages

4.3.2 Presidentialism: advantages and disadvantages

4.3.3 Semi-presidentialism: advantages and disadvantages

A Menu of Options 3 Constituting an Executive Government
(p. 189)

With the possible exception of Switzerland, every established democracy in the world today uses either a presidential, parliamentary or semi-presidential system of government. Parliamentary systems are characterized by the legislature being the principal arena for both lawmaking and (via majority decisions) for executive power. Presidential systems are characterized by the separation of the executive and legislative branches, with executive authority residing outside the legislature, with the president and his or her cabinet. The simplest definition of the differences between the two approaches can thus be summed up by the degree of relative independence of the executive, with pure presidentialism being characterized by executive independence and pure parliamentarism by the mutual dependence and intertwining of a state's legislative and executive capacities.

For the issue of democracy and deep-rooted conflict, however, the key distinction between parliamentarism and presidentialism focuses on the distinction between, on the one hand, the range of parties and opinions that can be represented in the executive under a parliamentary system, in contrast to the unavoidably singular nature of authority represented by the office of the president. Although this comparison is often over-drawn-

4.3 Executive Type: Presidentialism versus Parliamentarism

The debate over the merits of parliamentary versus presidential approaches is not so much a question of which is best, but rather of the most appropriate choice for a given society, considering its particular social structure, political culture and history.

– presidential executives can and often do have a range of political and ethnic identities represented in the cabinet, while parliamentary systems are often dominated by a single party alone – it remains central to the debate concerning the relative merits of presidentialism, parliamentarism and semi-presidentialism.

As with many institutional choices, the debate over the merits of parliamentary versus presidential approaches is not so much a question of which is *best*, but rather of the most appropriate choice for a given society, considering its particular social structure, political culture and history. It is essential, before any of the options are examined in any detail, for due consideration to be given to the specific factors that need to be addressed in the country. This may include issues such as the need for a strong government, the degree of trust between the parties, their ability to set aside their differences in the national interest, the levels of checks and balances required, the extent of the trauma that the society has undergone, the presence of dominant personalities and their democratic credentials in the political arena, the need for compromise, the necessity to think long-term as well as short-term, the need for flexibility and so on.

4.3.1 Parliamentary systems

In practice, the institutional choices made by most new democracies in the “second wave” of democracy following the World War Two has favoured parliamentary systems as being the best choice for fragile or divided new democracies. Much of the scholarly debate in favour of parliamentarism has focused less on the desirability of parliamentary government than on the inherent difficulties of presidentialism. The majority of the world’s “established” democracies use parliamentary systems, while a disproportionately large number of democracies which have experienced authoritarian interludes – especially in Latin America and Asia – use or have used presidentialism. Because of this record, many observers have argued that it is parliamentarism itself that has proved to be a positive factor in consolidating democracy. Under this rationale, parliamentary government has been identified as having a number of moderating and inclusion-promoting features that have assisted nascent democracies.

Advantages

The efficacy of a parliament as a mechanism of democratic governance will be substantially influenced by the composition

4.3 Executive Type: Presidentialism versus Parliamentarism

of that parliament in terms of the number of political parties represented. Therefore, any discussion of the advantages of parliamentary systems must bear in mind that it is closely related to the type of electoral system used in the election of that parliament; this will determine aspects such as inclusivity, particularly in relation to ethnic groupings. Such advantages include:

Ability to facilitate the inclusion of all groups within the legislature and the executive. Because cabinets in parliamentary systems are usually drawn from members of the elected legislature, parliamentary government enables the inclusion of all political elements represented in the legislature, including minorities, in the executive. Cabinets comprising a coalition of several different parties are a typical feature of many well established parliamentary democracies. This means that participation in government is not the preserve of one group alone, but can be shared amongst many, or all, significant groups.

In societies deeply divided by significant ethnic or other cleavages, this principle of *inclusion* can be vital. This is why a number of democratic transitions in recent years (e.g., South Africa) have featured “grand coalition” or “unity” governments – i.e., executives in which all significant political parties are represented in cabinet and take part in executive decision-making. Such arrangements are often made mandatory on the basis of primary electoral support – for example, a constitution may state that all parties which receive a minimum percentage of the vote should be included in the grand coalition executive in proportion to their overall vote share, as in Fiji and transitional South Africa. Grand coalitions are also common in non-divided democracies at times of great stress – such as times of economic crisis or when a country is at war – where “governments of national unity” bring together major parties from all sides into the cabinet.

Flexibility and capacity to adapt to changing circumstances. Because parliamentary coalitions can be made and unmade to suit changing circumstances, and because governments in many parliamentary systems can change on the floor of the legislature without recourse to a general election, advocates of parliamentarism point to its flexibility and capacity to adapt to changing circumstances as a strong benefit. A discredited government can be dismissed from office by the parliament itself, for example, as occurred in Ecuador in 1994. In the same way, many parliamentary systems (e.g., the United Kingdom, Canada, Australia and many others) enable elections to be called at any time, rather

than be subject to the fixed terms common to presidentialism.

“Checks and balances”. By making the executive dependent, at least in theory, upon the confidence of the legislature, parliamentary systems are said to foster greater accountability on the part of the government of the day towards the people’s representatives. Proponents argue that this means that there is not only greater public control over the policy-making process, but also greater transparency in the way decisions are made. However, such arguments often fail to take account of the degree of party discipline in many parliaments, where the legislature acts more as a “rubber stamp” than a check upon the power of the executive.

Relative stability and continuity of new democracies that have adopted parliamentary systems. Of the many states that became independent in the three decades following the end of World War Two, *all* the countries which could claim to have maintained a continuously democratic record to the late 1980s were parliamentary systems. The statistics are illuminating: of the 93 new democracies that gained their independence between 1945 and 1979, all of the 15 countries which remained democratic throughout the 1980s were parliamentary rather than presidential systems, including some of the developing world’s most successful democracies like India, Botswana, Trinidad and Tobago and Papua New Guinea. Conversely, all the new presidential democracies from this period suffered some form of democratic breakdown. Overall, parliamentary systems have a rate of survival over three times that of presidential systems.

Disadvantages

The major disadvantages of parliamentary systems include:

Tendency towards ponderous or immobile decision-making. The inclusiveness that typifies grand coalitions can easily turn into executive deadlocks caused by the inability of the various parties to agree on a coherent position on issues of disagreement. This was typified by the “immobilism” that affected Fourth Republic France and that was partly responsible for General de Gaulle’s assumption of presidential power. Decision-making deadlock was in part responsible for the breakdown of power sharing under Cyprus’s 1960 constitution. The latter period of the National Party’s participation in South Africa’s government of national unity in 1996 is a more recent example of the potential for such arrangements to result in deadlock and to then have the potential to undermine the very unity that they were intended to stimulate.

4.3 Executive Type: Presidentialism versus Parliamentarism

Lack of accountability and discipline. Critics also argue that parliamentary systems are inherently less accountable than presidential ones, as responsibility for decisions is taken by the collective cabinet rather than a single figure. This is especially problematic when diverse coalitions form the executive, as it becomes increasingly difficult for electors to establish who is responsible for a particular decision and make a retrospective judgement as to the performance of the government.

Propensity towards weak or fragmented government. Some parliamentary systems are typified by shifting coalitions of different forces, rather than by disciplined parties. Under such circumstances, governments are often weak and unstable, leading to a lack of continuity and direction in public policy.

Survival of new parliamentary democracies may be attributable to other factors. Finally, the successful record of survival of parliamentary democracies cited above is mitigated by the fact that almost all the successful cases are former British colonies, with the majority being small island nations in the Caribbean and the South Pacific – a concentration which suggests that other factors apart from parliamentarism may be responsible for their democratic success.

An alternative critique of parliamentarism sees it as being as or more conducive to unadulterated majority-rule than even the purest forms of presidentialism. In reality, many parliamentary governments, particularly in new democracies, are *not* comprised of inclusive multi-party coalitions but rather by disciplined single parties. In divided societies, such parties can represent predominantly or exclusively one ethnic group. When placed in a parliamentary system, a 51 per cent majority of the seats in such cases can result in 100 per cent of the political power, as there are few or no ameliorating devices to restrain the power of the executive – hence the term “elective dictatorship” associated with some cases of single-party parliamentary rule. Moreover, and in direct contrast to the separation of powers that occurs under presidentialism, many parliaments *in practice* provide a very weak legislative check on governments because of the degree of party discipline – which means that a slim parliamentary majority can win every vote on every issue in the parliament. In such cases, parliamentary government can lead to almost complete winner-take-all results.

4.3.2 Presidentialism

Presidentialism has been a popular choice amongst many new democracies in the last decade. In fact, almost all the new demo-

cracies in Asia, Eastern Europe and Latin America in this period have chosen presidential systems as the basis of their new democracy. While the influence of the United States, the world's best known presidential system, is probably partly responsible for this trend, recent experience has also highlighted a number of advantages of presidentialism.

Advantages

A directly elected president is identifiable and accountable to voters to a high degree. The office of the president can be held directly accountable for decisions taken because, in contrast to parliamentary systems, the chief executive is directly chosen by popular vote. It is thus easier for the electorate to reward or retrospectively punish a president (by voting him or her out of office) than is the case with parliamentary systems.

Ability of a president to act as a unifying national figure, standing above the fray of sectarian disputes. A president enjoying broad public support can represent the nation to itself, becoming a symbol of moderation of the "middle ground" between rival political groupings. To play this role, however, it is essential that the rules used to elect the president are tailored so as to achieve this type of broad support, rather than enabling one ethnic or regional group to dominate (see section 4.4 on "Electoral Systems for Divided Societies" for further details).

Higher degree of choice. The fact that presidential systems typically give voters a dual choice – one vote for the president and one vote for the legislature – means that voters are usually presented with a considerably higher degree of choice under presidential systems.

Stability of the office and continuity in terms of public policy. Unlike parliamentary governments, which can shift and change completely without recourse to the electorate, the president and his or her administration normally remains relatively constant. In many presidential systems, the terms of office are rigidly fixed, which can give greater stability in office and predictability in policy-making than some parliamentary alternatives. This leads, in theory at least, to more efficient and decisive governance, making it attractive for those cases where governments change frequently because of weak parties or shifting parliamentary coalitions, or where hard political decisions, such as contentious economic reforms, need to be taken.

Disadvantages

Presidency captured by one political or ethnic group. The major disadvantage of presidentialism for divided societies is the

4.3 Executive Type: Presidentialism versus Parliamentarism

propensity of the office to be captured by one political or ethnic group. This can create particular difficulties for multi-ethnic societies. In such situations – which are common in societies attempting to make a transition to democracy from a period of deep-rooted conflict – the office of the president can become a highly majoritarian device, ensuring almost complete political power with often a limited plurality of the total vote. This is particularly the case where there are two or three main groups all struggling for power. In such a case, the president can easily be perceived as the representative of one group only, and consequently has limited incentive to appeal to the needs and votes of these other groups. Under such a scenario, the office of the president can become a symbol of ethnic domination or subjugation: exactly the type of in-group/out-group symbolism that deeply divided societies need to avoid at all costs.

No real checks on the executive. This becomes even more true when there is a direct concordance between the president's party and the majority party in parliament. In this case (typified for many years by Mexico) the parliament has almost no real checks on the executive and can become more of a glorified debating chamber than a legitimate house of review. This problem can be exacerbated by the fact that a president, unlike a parliamentary prime minister, can become virtually inviolable during his or her term of office, with no mechanism for dismissing unpopular incumbents. Salvador Allende's election as president of Chile in 1970, for example, gave him control of the executive with only 36 per cent of the vote, and in opposition to the centre and right-dominated legislature. Some analysts have argued that Chile's 1973 military coup can be traced back to the system that placed an unpopular president in a position of considerable long-term power. While impeachment of the president by the legislature is a device built into many presidential systems, it remains the case that the presidency is a much less flexible office than the major alternatives.

Empirically associated with democratic failure. In marked contrast to the relative success of parliamentary democracies established between 1945 and 1979, *none* of the presidential or semi-presidential systems established during this period were continuously democratic. Presidential democracies were also twice as likely as pure parliamentary democracies to experience a military coup: in the period 1973–1989, five parliamentary democracies experienced a military coup compared to 10 presidencies. At the time of writing, there are only four presidential

democracies that have enjoyed 30 years of continuous democracy: the United States, Costa Rica, Colombia and Venezuela. The shining example of the US apart, this is not an encouraging record of democratic stability.

4.3.3 *Semi-presidentialism*

A final executive type is what we call “semi-presidentialism”; that is, a situation in which a parliamentary system and prime minister, with some executive powers, is combined with a president who also has executive powers. The ministry is drawn from and subject to the confidence of the legislature. This is a relatively unusual model – found today in France, Portugal, Finland, Sri Lanka and one or two other countries – but has nonetheless been cited by some experts as being the most desirable executive formulation for fragile nascent democracies.

Advantages

Can combine advantages of presidentialism and parliamentarism. The appeal of the semi-presidential model is its ability to combine the benefits of a directly elected president with a prime minister who must command an absolute majority in the legislature. A move to semi-presidentialism has been recommended as a good “half way house” for some countries that want to combine the benefits of both models.

Mutual consensus requirement. Proponents of semi-presidentialism focus on the capacity of semi-presidentialism to increase the accountability and “identifiability” of the executive, while also building in a system of mutual checks and balances and the need for consensus between the two executive wings of government. This mutual consensus requirement can be a particular advantage for highly divided societies, as it requires a president to come to an agreement with the legislature on important issues, and thus to be a force for the “middle ground” rather than the extremes.

Disadvantages

Propensity for deadlock between and within the executive arms of government. Because a government’s powers are effectively divided between the prime minister and the president – for example, foreign affairs powers being the preserve of the president while the prime minister and the cabinet decide domestic policy – a structural tension exists within the government as a whole. This can lead to deadlock and immobilism, particularly if, as has occurred in several semi-presidential systems, the

4.3 Executive Type: Presidentialism versus Parliamentarism

prime minister and the president come from opposing political parties. The benefits of compromise and moderation can degenerate into a stand-off. This is especially the case when the division of responsibility between the two offices is not always clear (e.g., foreign policy in the French system), and where the timing and sequencing of elections between the houses differs.

4.3.4 Conclusion

The competing claims concerning the benefits of parliamentary and presidential systems of government are confusing and sometimes even contradictory. However, it is possible to glean several trends and tendencies.

Compromise, moderation and inclusion are keys to democratic stability. Firstly, both sides of the debate argue that their preferred model is, under particular circumstances, the best option for inducing compromise, moderation and inclusion. It is clear, therefore, that these characteristics are seen as being the key to democratic stability in deeply divided societies.

Size and distribution of competing groups are important factors in deciding on executive type. Two variables would appear to be of particular importance when choosing an executive structure: the *size* and *distribution* of the competing groups within society. Presidencies may have difficulty being perceived as unifying offices where there are three or four roughly equally sized groups, but likewise parliaments themselves have sometimes been an instrument of majority domination in divided societies where one group forms an absolute majority of the population. When Sri Lanka changed from a parliamentary to a presidential system of government in 1978, it did so partly because there was seen to be a need for a unifying national figure who could represent both the dominant (80 per cent of total) Sinhalese population, but also the minority Tamils. They did this by designing the electoral system so that Tamils could still influence the choice of president. In Kenya, by contrast, President Daniel arap Moi is typically perceived as representing his own Kalinjini tribe against the majority Kikuyu tribe, despite a distribution requirement which prescribes that to be elected president, a candidate has to receive at least 25 per cent of the vote in at least five out of the eight provinces.

Much depends upon the way in which the various offices are elected. As with all of the mechanisms described in this chapter, the competing benefits of parliamentary and presidential models cannot be viewed in isolation. For example, the nature of the

electoral system is key, as are the different checks and balances that can be put in place to address specific fears and concerns. Many of the power-sharing virtues advocated by proponents of parliamentarism are premised on the assumption that minorities as well as majorities will be represented in the legislature, and that coalition governments rather than single-party rule will be the norm. For many countries, this means that a proportional electoral system is crucial to the success of parliamentary democracy as an agent of conflict management.

Similarly, a president's ability to encourage inter-ethnic moderation and compromise is often dependent upon electoral arrangements that offer clear incentives for compromise. Some scholars of ethnic conflict have argued that electoral arrangements which require some geographic distribution of the vote, or in which the second and third choices of voters are taken into account, offer the best models for investigation, as they encourage the elected president to become a pan-ethnic figure. By contrast, presidential or parliamentary elections held under a first-past-the-post system are more likely to produce outcomes in which the victor's support comes primarily from one geographic and/or ethnic region.

There is considerable room for flexibility and opportunity for innovation to maximize the advantages and disadvantages of each. It is worth remembering that all three classifications – parliamentarism, presidentialism and semi-presidentialism – are more ideal types than definitive models. There is considerable room for flexibility and opportunity for innovation to maximize the advantages and disadvantages of each. Some parliamentary countries such as South Africa, for example, call their prime minister a "President", thus maximizing the symbolic powers of the office while maintaining the structural advantages of a parliamentary system. Israel recently introduced a hybrid system in which the people nonetheless directly elect the parliamentary prime minister. Finland's semi-presidential system allows the president to share power with the prime minister on a nearly equal basis, but with specific responsibility for certain areas such as foreign policy. Creative constitutional engineering thus provides opportunities for maximizing desired characteristics while minimizing perceived disadvantages.

CONSTITUTING AN EXECUTIVE GOVERNMENT

Parliamentary system: The legislature is the principal arena for both lawmaking and (via majority decisions) for executive power.

Presidential system: The executive and legislative branches are separated, with executive authority residing outside the legislature with the president and his or her cabinet.

Semi-Presidential: Combines a parliamentary system featuring a prime minister who has some executive powers, with a president who also has executive powers.

	Parliamentary systems	Presidential systems	Semi-Presidential systems
Advantages	<ul style="list-style-type: none"> ■ inclusiveness (can include all groups within the executive) ■ flexibility (parliamentary coalitions can change without recourse to elections) ■ checks and balances (executive is dependent on the confidence of the legislature) ■ empirically associated with democratic persistence 	<ul style="list-style-type: none"> ■ can be a unifying national figure ■ highly identifiable and accountable to voters ■ greater degree of choice for voters ■ stability and continuity of policy-making 	<ul style="list-style-type: none"> ■ can combine advantages of both presidentialism and parliamentarism ■ “mutual consensus” requirement
Disadvantages	<ul style="list-style-type: none"> ■ possibility of executive deadlocks, stalemates and immobilism ■ problems of accountability as decisions are taken by the collective cabinet ■ lack of governing stability 	<ul style="list-style-type: none"> ■ centralization of authority in one person ■ inherently majoritarian and exclusive ■ empirically associated with democratic failure 	<ul style="list-style-type: none"> ■ dangers of deadlock between president and parliament ■ division of governing powers can be unclear

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