

From Belfast to Bosnia: Piecemeal Peacemaking and the Role of Institutional Learning

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Implementing power-sharing arrangements can be cumbersome. This article examines the institutional processes and changing nature of power-sharing mechanisms instituted in Northern Ireland and Bosnia-Herzegovina. It scrutinises the problems of legitimacy and elite predominance, endorsing power-sharing arrangements and their institutional processes. The institutional capacity of consociational arrangements and the strengths and weaknesses of consociational theory are addressed. Finally, the power-sharing panacea is then applied to the Bosnian case, in the guise of the Dayton Peace Accords of 1995, and the Northern Irish Good Friday Agreement of 1998. These cases illustrate the degree to which piecemeal or incremental consociational arrangements exhibit degrees of institutional learning over time.

Democratic transitions in divided societies are notoriously difficult to regulate. The familiar paths of war-making, institution building and social change are less certain in territories riven with ethno-national conflict. In divided societies, 'ethno-national groups preferences' can be placed on a continuum with a centralized unitary state at one end and secession or partition at the other. At one extreme the numerically weaker group typically opts for a decentralized political structure allowing for greater autonomy, extensive self-government and/or independence. At the other extreme, numerically stronger groups or majorities tend to favour a more centralized political process, and view any form of decentralization, be it federal, devolved or autonomous in nature, as a prelude towards secession and stated dissolution. The experiences of these two deeply divided societies: Bosnia-Herzegovina and Northern Ireland and their respective power-sharing arrangements, the Dayton Peace Accords (DPA) and the Good Friday Agreement (GFA) are examined. The role of institutional learning is associated with the notion of institutional change. Institutional learning refers to the way in which institutions and their actors learn, transfer, coordinate and integrate policies and mechanisms to change institutions for the better. The degree of institutional learning in the application of consociational power-sharing institutions to regulate divided territories and communities is considered here. The conditions most likely to facilitate successful power-sharing and the follies which lend themselves to failure are assessed.

Neither the Bosnian nor Irish cases can be considered entirely successful cases of power-sharing. If, however, success is defined as: a reduction in inter-ethnic conflict

deaths;¹ and the likely perseverance of peace within democratic domestic institutions, acquiring increasing legitimacy; then the problematic implementation of the DPA and GFA may prove insightful. The theory of power-sharing will be assessed in light of these issues and tandem with the impact of legitimacy on consociational procedures and mechanisms. After scrutiny, the predominance of the role of the politically relevant elites (PREs)² in power sharing theory is often at the expense and marginalization of citizens making the onus on elites the most vulnerable aspect of the theory.³ The empirical application of power-sharing in other divided societies illustrates the comparative elements between the Northern Irish and Bosnia-Herzegovian cases.

The analysis focuses on the power-sharing elements of the DPA and the GFA and addresses why these features of agreement have proved so difficult to implement and sustain. The findings concur with Walter's assessment that 'the conditions that encourage groups to initiate negotiations and sign settlements do not appear sufficient to bring peace'.⁴ We suggest that the role of elites must be complemented with the role of third parties internationally and sponsored by a strong civil society pillar domestically.

The network of actors associated with the creation and implementation of consociational bargains, influences the comprehensive nature, capacity and innovation of the power-sharing institution created. The primacy afforded to the group elites in consociational theory is often at the expense of other politically relevant elites at the domestic and the international level and distorts the nature of power-sharing bargains and the likelihood of implementation. We argue that power-sharing pacts are often three level games, where internal group dynamics and external third party constraints and preferences shape elite decisions and the final bargain arrived at. In short, durable political settlements in divided societies often require more than just consociational institutions.⁵ Effective consociational bargains require institutional learning, where the form and embedding of routines, attitudes and organizational forms underpinning learning are stressed.

In this article we first consider the strengths and weaknesses of power-sharing in establishing stability and peace in divided societies. Second, consociational theory is applied to Northern Ireland and Bosnia-Herzegovina. We consider what made power-sharing possible and what influence the often neglected role of domestic and international actors have had in shaping elites' decision-making, the promotion and operation of power-sharing and the degree to which institutional learning is evident. We chart the evolution of power-sharing from initial implementation in each case to address what lessons these cases have for consociational theory. We assess whether consociationalism is better described as a degenerating research programme or a progressive programme of research.⁶ The importance of endogenous and exogenous political actors for the implementation and operation of power-sharing bargains suggests that actor-centered institutionalism, incorporating all the relevant actors is important for understanding successful implementation.⁷ It also illustrates that elite predominance, while significant, is not always sufficient in divided societies in transition with competing self-determination claims.

CONSOCIATIONALISM AND THE PILLARS OF POWER-SHARING

The consociational approach to conflict management is a group-based institutional mechanism centered on cooperation between political elites. Defined as an association of communities, a consociation is the outcome of a bargain or pact between representative political leaders of ethnic or religious groups in deeply divided societies. Based on four criteria, consociationalism requires: (1) the participation of representatives of all significant groups; (2) the proportionality principle to serve as the basic standard of political representation; (3) a high degree of community autonomy or self-government; and (4) minority veto rights to protect each group's vital interests.⁸

Consociationalists argue these institutional arrangements allow local groups to both share political power with regard to statewide issues, while granting self-governing prerogatives on issues that regard them exclusively. Successful power-sharing requires cooperation among elites capable of accommodating divergent interests with the ability to accommodate and moderate (and at very best transcend) cleavages, and to join in a common effort with the elites of rival ethno-national blocs. The capacity of the elites in turn, depends on its commitment to the maintenance of the regime and to the maintenance of existing modes of accommodation while recognizing the 'perils of political fragmentation' for their elite decision-making status.⁹

In addition to these core conducive features, Lijphart asserts that other factors facilitate successful consociation: namely the segmental isolation of ethno-national communities; a multiple balance of power between ethnic communities; shared external threats; a tradition of elite accommodation; socio-economic equality; small population size and small government; and segmental parties within a moderate multi-party system. Many of these factors are conspicuously absent in non-democratic divided societies and conversely, visible in stable democracies. Suggesting consociationalism alone is often insufficient to mitigate conflict and provokes differing definitions of consociationalism to attest to alternative situations.¹⁰ When all these factors are present, consociationalism and power-sharing accommodations can provide for a consensus agreement between the representative elites (namely the elites of the respective society groupings or ethnic blocs) while including within group challengers (the competing, up and coming elites in the ethnic bloc). These types of inter-ethnic grand coalitions exemplified by the Northern Irish GFA and Bosnian DPA have been addressed in the consociational literature.¹¹

Inter-ethnic grand coalition bargains appeal to the demands made at the ethnic-bloc or group level, often require the need for external actors as guarantors or co-sponsors.¹² Incorporating these actors expands the network associated with the implementation of the agreement, seen as an integral part of institutional learning.

Consociationalists argue that ethnic differences have to be taken as a given, recognized, and made integral in the institutional design of power-sharing pillars. This type of institutional arrangement enjoys support from a wide range of different political quarters. For liberals concerned with human rights and democratization,

consociationalism is a 'democratic response to the problem of representation in deeply divided societies' while for political realists it is 'a logical response to the security and material needs of group actors'.¹³

Power-sharing institutions have worked successfully in divided societies where the dominant cleavage between groupings is not one of territory, such as Switzerland and Belgium. Power-sharing can be tailored to fit the specificities of societies deeply divided over territory, where self-determination disputes dominate such as Bosnia and Northern Ireland.¹⁴ Power-sharing institutions are partial to institutional learning. Consociational agreements have been amended, altered and added to, in order to create more viable arrangements and agreements, *The GFA in Northern Ireland was described as 'Sunningdale for Slow Learners'* referring to a 1973 power-sharing arrangement in Northern Ireland which formed part of the framework of the later GFA. Fundamentally, however, consociational arrangements are deemed to be dependent on elites.

Consociational Constraints

The ability of power-sharing pillars to foster inter-ethnic accommodation is constrained by *the dependence of any arrangement on ethnic bloc elites*. The nature of elite accommodation, works on an operational code of *do ut des* or 'give that you may be given', suggesting that consociational arrangements may be less predisposed to remedying ethnic conflict than allocating elites, ethno-national spheres of influence. Bosnia's pre-war experience presents a clear warning of the precariousness of consociational democracy. As Steven Burg (1997: 135) has argued, among the most critical elements for the successful creation of consociational institutions in 1990s Bosnia was 'elite cooperation'.¹⁵ *The ability of the politically relevant elites to agree to share power is shaped by their 'leadership latitude',¹⁶ defined as their political will and/or capacity to create effective conflict-regulation institutions.*

The institutional (structural) and procedural (electoral) dynamics of the consociational system discourage cooperation among ethnic groups. Politicians and political parties have little or no incentive to appeal beyond their own narrow ethnic constituency.¹⁷ When elites do compromise across ethnic lines, they are subjected to within-bloc competition from factional elite challengers keen to 'outbid' the incumbent leadership in asserting *their legitimacy* as the rightful representatives of the ethno-national bloc, often denouncing the parties to an agreement as 'sell-outs'.¹⁸ Elites party to consociational arrangements gauge whether the tendency within their ethnic bloc membership is centrifugal or centripetal. *Conscious that centrifugal competition constrains inter-ethnic compromise, incumbent bloc elites will arrive at a partial, limited and security oriented arrangements rather than comprehensive institutional bargains with the capacity to address core conflict concerns.*

Power-sharing elites are engaged in a *nested game*, a within-bloc and an inter-ethnic game. The ability of incumbent leaders to gain and maintain power is dependent upon their domestic group support base, as well as the legitimacy afforded to them externally, from third parties.¹⁹ Equally, ethnic bloc elite leaders

have incentives to limit the number of issues that might threaten their position. For example rather than engage in full and comprehensive institutional changes, elites may opt to take a more incremental approach, so as not to jeopardize their representative group or indeed their own elite position as leaders of the group they represent. In so doing, elites bargain in the shadow of the future. Much like negotiations between parties to a conventional coalition, in power-sharing bargains elite decisions are made with a view to unanticipated consequences, and tend to be cautionary, risk averse and limited in scope.

In sum, power-sharing formulas are susceptible to ethnic bloc-power dynamics though less so when power-sharing is not adopted as a panacea but rather a transitional or transformative regime. The South African National Peace Accord of 1991 and the subsequent Agreement for Reconciliation and Peace of 1994 heralded the transition from Apartheid toward a new South Africa.²⁰ In this case transformation required the weaving together of existing ethnic cleavages while instituting cross cutting cleavages to benefit issue based political parties. The South African model implemented a consociational arrangement of finite term and dispensed with the use of ethnic groups as the building blocs of a consociational society.²¹ Temporal consociational mechanisms allowed for guaranteed inclusion of minority white South Africans.²² The South African use of consociation as a transitional measure is something of an exception.²³ The case of Lebanon illustrates the difficulties of power-sharing and its reification of ethnic divisions and elite predominance. As the term *Lebanization* attests, it is now used to refer to an 'insoluble' matter.²⁴

The dearth of examples of consociational arrangements surviving and developing in fully-fledged democracies is not encouraging for either Bosnia or Northern Ireland as the Lebanese situation in 1975 attests.²⁵ To avoid Lebanon-like crises, consociationalists all too easily trust (or assume) the elites' capacity to understand the virtues of self-restraint. Whatever the short-term attractions of consociational institutions to convince warring elites to sign a peace bargain or agreement, the same structure might be an impediment to long-term accommodation.²⁶ Critical to this calculation is the legitimacy afforded to the group elites that reach agreement and whether or not it is endorsed by a majority of the people by way of referendums. South African changes were initiated by referendum in 1992 when 68.7 per cent of South Africa's 15 per cent white population supported a negotiated abolition of its minority rule.²⁷

The claim for legitimacy usually 'involves the capacity of a political system to engender and maintain the belief that existing political institutions are most appropriate'.²⁸ The role of legitimacy and its incorporation into power-sharing arrangements influences the prospects for peace, favouring the Northern Ireland case over that of Bosnia. The importance of legitimacy is initially attributed to input oriented legitimacy, or a governing power-sharing agreement endorsed by the people. Legitimacy assesses whether the manifest preferences of the governed are considered and this is an important feature of the GFA.²⁹ Unionists and Nationalists in Northern Ireland endorsed the 1998 GFA peace settlement by referendum.

The public endorsement of the GFA by plebiscite adhered to the fundamental elements of voice, advocacy, and representation. The GFA is more than a bargain between group elites, by creating community (and policy network) wide consensus over the mechanisms of conflict regulation. Initial public endorsement of the agreement provided legitimacy for the bargain.

Withdrawal from the peace process, or the unsanctioned resumption of hostilities by paramilitaries affiliated to political parties after a referendum publicly endorsed power-sharing, could be politically costly for any democratically mandated party subject to electoral punishment. By contrast, Bosnian citizens did not have the opportunity to give their explicit support to the peace agreement signed in 1995 at Dayton, Ohio. As a result, the peace process has been left largely to the management of the same ethnic political parties' elites responsible for the 1992–95 war, self-appointed interpreters of the interests of their respective ethnic constituencies. The issue of legitimacy also influences the interpretation of and tolerance for violence. Since September 2001 the use of force by non-state actors has lost any legitimacy. This shift in legitimacy has ramifications for paramilitaries both in Northern Ireland and Bosnia.

The following sections examine the power-sharing experience in Northern Ireland and Bosnia, both are troubled cases of consociation. In Northern Ireland power-sharing is revived intermittently between protracted negotiations. In Bosnia power-sharing persists sustained by external regulation.

Northern Ireland

The Good Friday Agreement (GFA) signed in Belfast on 10 April 1998 attempted to address the 'intractable' Northern Irish conflict. The territory of Northern Ireland is contested and its community divided along a Unionist–Nationalist cleavage.³⁰ Prior to the GFA, the Republic of Ireland's constitutional claim to Northern Ireland, officially part of the United Kingdom, shaped the nature of Unionist concerns over Irish Nationalist and Republican aspirations to a United Ireland. Irish Nationalist fears centered on Unionist dominance in Northern Ireland, which was created by an outdated and failed system of control later substituted by direct rule from Westminster. Escalating inter-ethnic conflict exacerbated by a combination of Republican and Loyalist paramilitarism altered not only the nature of the conflict within Northern Ireland but also the relationship between the British and Irish governments. They reached a shared understanding to consider the totality of relationships in Northern Ireland in the Anglo-Irish Agreement of 1985, setting up inter-governmental security cooperation over Northern Ireland. This agreement formed an incremental or piecemeal step towards the GFA.

Paradoxically, the GFA provides for two competing consequences. In recognising and legitimising the aspirations of the two ethnic blocs or traditions of Unionism³¹ and Nationalism³² the long-term outcome of the GFA is not fixed. Northern Ireland could integrate either into the Republic to create a united Ireland or secure the maintenance of its current position within the United Kingdom.³³ Crucially, the decision as to which of these potential conclusions is achieved resides

not with the elite leaders of the ethno-national blocs but (by virtue of a referendum) with a majority of the people of Northern Ireland. It is for this reason among others that the GFA is described as consociation 'plus'.

In addition to addressing security concerns and the problem of political violence in Northern Ireland, the GFA recognized the two blocs' societal security concerns and the conflicting aspirations of the two traditions in Northern Ireland. These aspirations, while not realized, are institutionally safeguarded. Any future decision or constitutional conclusion over the status of Northern Ireland would reside not with the elites but rather with the people.

The originality of the GFA stems from the intricate political bargain derived from these diametrically conflicting aspirations that nevertheless incline the group elites towards institutions and mechanisms of mutual dependence.³⁴ The GFA was reached despite the participants' contradictory end goals. Why would competing ethnic bloc elites with diverging ambitions agree to a comprehensive consociational bargain? The GFA addressed the pressing needs of the bloc elites while acknowledging the diverse aspirations of Northern Ireland's two traditions of Unionism and Nationalism. It appealed to the majority of the elites because it promised imminent access to power and alluded to the possibility of realizable aspirations in the future and 'the transformative potential of inter-ethnic elite negotiation'.³⁵ The next section, the architecture of the Agreement, and the influence of piecemeal peacemaking on its institutional features, along with the influence of bloc elites, international actors and third parties thereupon, will be examined.

The Architecture of the Good Friday Agreement

The consociational 'plus' features of the GFA describe a three-tiered arrangement with internal consociational or power-sharing characteristics, North–South or all Ireland features, as well as British–Irish and East–West elements.³⁶ The GFA gained elite and later demotic endorsement as 'people not politicians had the last word'³⁷ by referendums in Northern Ireland whereby 71 per cent were in favor and in the Republic of Ireland 94 per cent favored the Agreement.

Initial approval for the GFA is attributed to the appeal of the Agreement's ethos, defined by some of its architects as the 'peace dynamic'.³⁸ The peace dynamic forms the guiding principle of the consociational elements of the GFA. It addresses the concerns of identity politics in Northern Ireland and the equality of difference. In the Agreement, both traditions in Northern Ireland are ascribed parity; their differences and rights are recognized, safeguarded, institutionally reflected and reviewed. In addition to the conventional Lijphartian blueprint for power-sharing, the GFA negotiators proposed the appointment of commissions to consider equality, policing, human rights and a review of justice and security policies. Similarly, the GFA accommodated the pressing needs of the within-bloc elites and factions while instituting mechanisms to address conflicting aspirations.

The configuration of the GFA reflects these objectives. A composite of earlier arrangements and agreements, it replicated and combined many of their 'scratched out clauses'³⁹ into an all-encompassing GFA based on three tiers or strands.⁴⁰

GFA parallels features of previous agreements, the short-lived power-sharing agreement of 1973 (the Sunningdale Agreement). The subsequent all-Ireland or North–South tier inherits features initially outlined in the Anglo-Irish Treaty of 1921, while the concluding British–Irish or East–West tier alludes to elements of the intergovernmental Anglo-Irish Agreement of 1985. Elements of intervening intergovernmental initiatives to encourage negotiations, such as the Downing Street Declaration of 1993 and the Framework Documents of 1995, are included in order to create an innovative, multilayered, all-encompassing arrangement.

Unlike previous arrangements, the GFA engaged the spectrum of politically relevant elites in Northern Ireland. The GFA **includes within-bloc elites and political actors previously excluded** from negotiations because of their Republican or Loyalist paramilitary affiliations.⁴¹ The consociational feature of the GFA principally required the inclusion of elite representatives from the majority of the competing groups. While the inclusive nature of GFA was problematic,⁴² the dynamic was maintained, although at intervals some of the parties' elites were either excluded or left in protest only to renew their involvement later.

The **incentive for elites to remain involved in the negotiations was to seize the opportunity to participate in a Northern Irish power-sharing executive Assembly, with a dual premiership** jointly elected by way of a parallel consent mechanism. A consummate example of the way in which mechanisms can be instituted to regulate factional elites was the **parallel consent mechanism** devised to encourage Unionists and Nationalists to nominate a candidate from their tradition or bloc acceptable to a majority of the other tradition or bloc's elite.⁴³ The aim of parallel majority voting and **similar devices is to create elite cooperation, making it routine.** In addition consociational features necessitate proportional representation in electoral systems and can create procedural incentives, such as access to ministerial positions by virtue of the d'Hondt allocation formula, **whereby parties have the right to nominate ministers according to their respective strength in seats.**⁴⁴

All of these features create **participation incentives, for all but the 'Other' parties not aligned to any particular ethno-national grouping** who could be assigned and re-assigned Unionist or Nationalist should a vote require it. Critically, the GFA was led in the **first instance by the British and Irish governments.** Known as strand three of the GFA, the British–Irish tier of the Agreement reflects the intergovernmental relationship and features of previous agreements when both governments agreed to consider 'the totality of relationships among the peoples of these islands'.⁴⁵ In keeping with the previous agreements, bilateral cooperation in the British-Irish Intergovernmental Conference was renewed and replaced the institutions established by the Anglo-Irish Agreement (AIA).⁴⁶ Whereas the previous agreement created a moderate but palpable degree of mutual dependence between the British and Irish governments, the **GFA broadened this dynamic to create mutual exchanges and dependency between the governments.** Intergovernmental relations are outlined in strand three of the Agreement.

Strand three established a British-Irish Council of the two sovereign governments including the devolved governments (of Scotland, Wales and Northern

Ireland) with powers to meet, delegate functions, and consider common policies.⁴⁷ It provided a forum for increased intergovernmental cooperation and attempted to reassure Unionists that the end of the union was not imminent. Avid Unionists feared that the Agreement's repeal of the Government of Ireland Act of 1920 was a 'stepping stone' towards Irish unification.⁴⁸

For Unionists, the British-Irish tier forms a counterweight against the influence of the North–South or 'all-Ireland tier' of institutions. The North–South Ministerial Council of members from the Irish and Northern Irish executives was formed to address shared, all-Ireland, cross-border and European Union (EU) concerns with the capacity to implement island-wide changes. The all-Ireland tier was analogous to the Council of Ireland proposed in the Government of Ireland Act of 1920 and the Sunningdale Agreement's Council of Ireland of 1974, both anathema to Unionists. In order to ease Unionists' concerns and enable an all-Ireland implementation of the Council's decisions, an amendment of Articles 2 and 3 of the Irish Constitution was required. The constitutional amendment was initially proposed in discussions held amid the Sunningdale negotiations in 1973 and the AIA of 1985 and was finally realized in the GFA in 1998. The primacy of the consent issue could no longer be contested by Unionists.

The purpose of the North–South Ministerial Council was twofold. The all-Ireland element recognized Northern Nationalist affinity with the Republic and hoped to improve Unionist perceptions of a permanent all-Ireland political component. Wary of the all-Ireland tier, Unionists argued for the British-Irish Council to take precedence over the North–South Ministerial Council.⁴⁹ However, the governmental decision to maintain the two distinct strands was instrumental in creating innovative confederal mechanisms⁵⁰ in the second and third tiers of the Agreement.⁵¹

Strand one, the internal or Northern Ireland tier of the Agreement, revisits features of previous power-sharing arrangements. The Sunningdale initiative of 1973 failed because of the strength of the Unionist veto and the ensuing protests and strikes. The collapse of Sunningdale has haunted all subsequent power-sharing proposals and explains, by virtue of policy learning, the existence of the overarching institutions created in the intergovernmental strands or tiers. The features of the Northern Ireland strand are consociational.⁵² As the Sunningdale Agreement failure illustrates, the discretion of the elites is constrained by mass support and the degree of mobilization of the bloc membership. Should the group mobilize against its own leadership, this would render any bargain vulnerable to the influence of the populace.⁵³ The inclusive, comprehensive and multilayered nature of the Agreement was designed to minimize this problem.

The GFA was inclusive, incorporating parties with paramilitary affiliations as well as the facets of previous agreements between the governments creating a tiered agreement in order not to succumb to previous agreement perils. The numbering of the strands reflecting their political magnitude, with strand three dependent upon the success of strand one. If consociational strand one succeeds, democratic institutions in Northern Ireland will succeed, if however strand one fails or stalls then strand

three the British-Irish strand, will resume as central to the governance of Northern Ireland.⁵⁴

The GFA was premised upon recognizing and incorporating features of the three crucial levels that had previously influenced the positions and negotiating preferences of the ethnic bloc elites. A pioneering feature of the GFA is the attempt to **create a comprehensive bargain** with its attempts to encompass, and in so doing, attempts to regulate, the three levels within its parameters.

The **Good Friday or Belfast Agreement attempted conflict transformation by addressing core conflict concerns.**⁵⁵ The GFA is distinctive, rather than solely addressing security, law and order policing or control the GFA addressed profound issues which had been 'lumbering and slumbering on for seventy years'.⁵⁶ The GFA adopted institutional mechanisms from the European Union (EU),⁵⁷ **to improve the 'socialising effect' of the agreement on the elites and their constituents.**⁵⁸ Guarantees, defined as the hallmark of the GFA, were made with the leaders of states as well as with local elites; **the Agreement increased the perceived value of collaboration.**⁵⁹

To this end the GFA **benefited from exogenous parties** and a network of influential actors not least 'the Greening of the White House',⁶⁰ which alludes to the Irish-American lobby engaging the US government to play an instrumental role from the outset of the Northern Ireland initiatives. In tandem with the EU, the US government provided support for **economic reconstruction** in Northern Ireland and convened a Forum for Peace and Reconciliation after the joint ceasefires. Critically, the **role of state custodians and guarantors mitigates the conventional dynamics of horizontal communication among elites rather than vertical accommodation between elites and bloc membership in power-sharing agreements.**⁶¹

As with third party involvement, external resources can be material, financial or status-oriented, endogenous elements feature strongly. Northern Irish civil society influenced the framing and implementation of the Agreement. Non-governmental organizations (NGOs), Northern Ireland's religious organizations and clergy played a pivotal role throughout the conflict.⁶² **The Nationalist Social Democratic and Labour Party (SDLP), one of the chief instigators of negotiations and the Nationalist party in power-sharing government with the Ulster Unionist Party (UUP), was formed from the Northern Irish Civil Rights movement.**

Initiating and framing the GFA to support the first strand or elite consociational pillars with internal domestic and external influential columns, attempted to circumvent the tendency for consociations to lead to inaction over controversial issues. Issues that threaten the position of existing elites such as the decommissioning of Republican weapons constrain the ruling elites' 'political will', their capacity or leadership latitude to remedy problems.⁶³

The GFA attempted to circumvent these **elite constraints**, address the issue of input legitimacy and mobilize bloc memberships as well as elites with plebiscites on the GFA in Northern Ireland and in the Republic of Ireland so **creating 'sufficient consensus'** and making implementation failure costly for political party leaders.⁶⁴ Neither wholly domestic nor solely international, the GFA is constructed to address

the challenges ethnic conflict poses for conventional perceptions of state sovereignty.⁶⁵

Problems of Good Friday Agreement Implementation

The ‘permanence’ of external intervention and its effect on the behavior of the actors and indeed the process was unexpected. Financial support notwithstanding the need for third parties to bolster the GFA illustrates a shift in the importance (and nature) of third party intervention more generally. Peace processes are acknowledged to be ‘long games’.

The foremost problem for implementing the GFA has been the issue of paramilitary weapons. The implementation of the GFA has been hindered by the delay in the decommissioning of Republican weapons, with successive arrangements for ‘putting weapons beyond use’ stopping short of success. This has amplified the role of politically relevant elites and the way in which they interpret their situation.⁶⁶ The political space afforded to the blocs with paramilitary affiliation has resulted in a degree of ambiguity and with it increasing difficulties for the implementation of the GFA.

The ambiguity over the issue of breaching ceasefires stems from the respective leaderships’ definition of a ceasefire as ‘a cessation of military operations’. This definition leaves room for incumbent leaderships to engage in civil administration or internal bloc regulation ‘punishment beatings’ with limited juridical constraint. ‘Civil administration’ broadens the scope of sanctions available to paramilitary leaderships, creating an ambiguous criteria for paramilitary ceasefires in the Irish peace process, allowing woolly parameters of responsibility and in-group regulation, where punishment for non-compliance is administered from within.⁶⁷

Participation in the Northern Irish Assembly has been problematic, as a result of initiatives by dominant parties to exclude others from participation for failing to fulfill their obligations under the GFA. The predatory party problematic has also hindered implementing the GFA. Predatory parties refer to the way in which the previously peripheral parties of Sinn Féin and the Democratic Unionist Party (DUP) have usurped the position of the SDLP and the UUP respectively as the dominant parties in the respective groups or blocs. Implementation problems surround the issue of policing reform and the need for all-party participation in local police boards in Northern Ireland for increasing legitimacy.

In the 2003 elections to the Assembly the less moderate parties gained the support of their respective groups. Sinn Féin, the Republican Nationalist party and the DUP became the dominant parties in the assembly. Attempts to renegotiate elements of the Agreement have (thus far) been rejected and in the interim direct rule persists. Other features of GFA reform have proceeded relatively unhindered, reforms to policing, the judiciary and withdrawal of the large British Army presence have been relatively successful. The core power-sharing political elements have however been frustrated by decommissioning and other concessionary policies. Prisoner releases while vital for the inclusive features of the GFA have become

increasingly problematic as criminal activity in the Northern Ireland is attributed to paramilitaries.⁶⁸

Previous security policy initiatives thwart existing attempts at implementation. The problem of state collusion and 'Dirty War' tactics were addressed by the South African Truth and Reconciliation Commission, but are conspicuously absent from the GFA process.

These particular problems stem from the GFA's attempts at **restorative rather than retributive justice**. The difficulties lie in the legitimacy afforded to these distinct modes of justice and the **failure of the GFA to institute either truth and reconciliation** type mechanisms or indeed war crimes tribunals to address these issues. Moreover, these difficulties highlight the problematic and complex role of elites and the degree to which internal within-group constraints hinder external or between group cooperation.

The GFA's position as more than solely a power-sharing agreement could be expected to provide judicial mechanisms to mitigate these difficulties. Failing to carve out these institutions has resulted in another substantive implementation problem for the Northern Irish case. The GFA persists as the basis for any future Northern Ireland settlement; the principles may have prescriptive consequences elsewhere.

Bosnia-Herzegovina

The Bosnian War lasted between April 1992 until November 1995, when a peace agreement was reached at Dayton, Ohio, after three weeks of intense negotiations conducted under the aegis of the United States. The end of the war came about as a **result of three interrelated episodes**. reasons for end of war

First, the North Atlantic Treaty Organization (NATO) conducted Operation 'Deliberate Force' in September 1995, effectively undermining the Bosnian Serb war machine.

Second, ethnic cleansing was practically completed. With most (but not all) Bosnians leaving in ethnically defined areas, nationalists had achieved their goal of securing control of territory by destroying the ethnic mix characterizing Bosnia prior to the outbreak of the conflict.

Third, Serbia and Croatia were ready to terminate their support for their ethnic cousins in Bosnia. Serbia was desperate to obtain the lifting of the United Nations (UN) sanctions imposed early in the war. Croatia wanted to regain control of its eastern region of Slavonia taken by the Serbs in 1991, and gain international legitimacy for its newly acquired independent state. Both Serbian and Croatian leaders negotiated and signed the peace at Dayton on behalf of their Bosnian counterparts. A massive international peace operation was deployed in early 1996 to help the parties implement the agreement.

Implementing the Dayton Peace Agreement (DPA) has been very difficult, and no clear exit strategy has yet emerged for international organizations and humanitarian agencies in the country. The primary reason for this is that the DPA was negotiated with the same ethnic leaders likely to boycott its full implementation.

Individuals and groups representing civic alternatives to nationalist forces were not invited to Dayton. Their absence facilitated the negotiation of ethnic separation and further undermined their potential influence over later developments. In particular, the absence of civic leaders at the conference did little to assist the electoral chances of non-nationalist parties in the first critical postwar elections.⁶⁹

The DPA was structured to preserve not only the separation of Bosnia in ethnic enclaves and but also the domination of those nationalist parties responsible for the war. Consociationalism was adopted as the main institutional solution to enable the parties to share power and, together with power, the spoils of peace. Paradoxically, the postwar institutional structure favors limited cooperation among the ethno-nationalist parties, who need each other to raise tension for electoral purposes, while presenting themselves as the only ones able to contain those tensions. Instead of deepening peace, the predominance of ethno-nationalist elites allows them to marginalize the influence of domestic civil society, contributing to the stifling of civic alternatives.

This unsustainable approach is exemplified in changing international perceptions of ethnic leaders such as former Serbian President Slobodan Milosevic. In 1995 international mediators considered him as 'indispensable' to achieve peace in Bosnia because of his capacity to cajole Bosnian Serbs into accepting an agreement.⁷⁰ Four years later, it became clear that Milosevic had become a significant problem for peaceful settlement in the region.⁷¹ That core elites in the process hinder its process is not unusual, however, the reliance on ethnic elites at the expense of indigenous, civil society contributions to the peace process can sometimes be self-defeating.

The Architecture of the Dayton Peace Agreement

The post-Dayton institutional framework corresponds to a 'classic example of consociational settlement',⁷² with extensive power-sharing provisions and self-governing prerogatives for the three main ethnic groups. The DPA created a complex political structure, composed of one state, two entities, three peoples, four million citizens, and five layers of governance led by 14 prime ministers and governments, making Bosnia the state with the highest number of presidents, prime ministers, and ministers in the whole world. Even a cursory overview of the institutions created by the Bosnian constitution⁷³ confirms the judgment that it is a 'Frankenstein constitution'.⁷⁴

The Bosnian institutional structure is internally contradictory. In the Preamble, the state-wide constitution recognizes 'three constituent peoples': 'Bosniac, Croat and Serb, as constituent peoples (along with others), and citizens of Bosnia-Herzegovina'. However, the Federation's constitution recognizes only Bosniaks and Croats as 'constituent peoples', while the preamble of the Republika Srpska (RS) constitution refers to the 'inalienable right of the Serb people to self-determination'. These clauses in the entity constitution create the basis for discrimination against the Bosnian Serbs in the Federation, and Bosniaks and Bosnian Croats in the RS, and contradict the state-wide constitution recognizing all three groups as 'constituent peoples'. This is a significant failure of the DPA, resulting from the creation of the

entity constitutions prior to the statewide constitution, leading some to argue that this makes the entities de facto illegal. The RS constitution came into force prior to Bosnia's declaration of independence in spring 1992. The Federation constitution was created as a result of the 1994 Washington agreement. The DPA created an overarching framework but did not harmonize the two entity constitutions, the original draft being American. Instead, it incorporated some discriminating aspects, for example in the election of the members of the tripartite presidency.

A three-member collective state presidency composed of one Bosniac, one Bosnian Croat, and one Bosnian Serb is elected directly. Crucially, the Bosniac and Bosnian Croat members are elected in the Federation, while the Bosnian Serb is elected in the Serb Republic. This method of election discourages officials from identifying themselves as representatives of the entire Bosnian body politic, and instead encourages ethnic over civic identity. The presidency functions on the basis of consensus, with any of the members having the right to block decisions by invoking the 'vital interest' of his or her respective group. When this occurs, the RS national assembly or the federation parliament can override a presidential veto with a two-thirds majority vote.

The central government is weak and with limited powers. The Council of Ministers comprises a member of each of the three main groups, each rotating the chair every eight months. In December 2002, the High Representative of the International Community, which was tasked by the DPA to supervise the implementation of the civilian aspects of the peace agreement and who since 1997 has assumed added powers, imposed a provision ending the rotation principle and thus providing more political stability. Only three ministries were created at Dayton, later raised to eight by 2002. The weakness of the central institutions is perhaps best illustrated by its budget, significantly smaller than that of the entities, but also it is dependent upon transfers from them. Without an army, police force, or judiciary, and with few economic and financial resources, the Bosnian state is 'thin', dangerously so.

Bosnia's statewide legislature is bicameral. The legislative process is cumbersome, slow, and experiences frequent deadlocks. Legislative activity has been very modest. In the first year of the parliament's existence, ten laws were passed. Between 1998 and 2000, an average of five laws a year was adopted. Since 2000 the pace of legislative activity from the Office of the High Representative (OHR) has been fast and furious with much of the legislation finding its way to the Constitutional Court under judicial review, as only specific international Dayton powers that are not justiciable. However, since the re-election of nationalist parties into power in late 2002, after a two-year period when a weak coalition of moderate parties brokered by OHR was leading the country, the work of the parliament has again been blocked.

The entities are granted all residual governmental powers and authority not expressly assigned to statewide institutions, but arguably constitutional jurisprudence and reform has shifted the balance somewhat. Each of the entities is provided with self-governing institutions, including legislative, executive, and

judiciary organ. Significantly, defense responsibilities are vested in the entities.⁷⁵ Only in early 2003 was the decision made to create a joint defense structure, although its exact configuration remains unclear.

Since its inception during the war as a US-sponsored military alliance the change in the strategic-military balance which forced the Bosniaks into alliance with the Croats was the key thing that made the Dayton project possible. Bosnian Croats have regularly insisted that the Bosniaks are unreliable partners. In areas with a Bosnian Croat majority, a parallel statelet, Herceg-Bosna, effectively governs, despite repeated attempts by international agencies to dismantle it. Local authorities have repeatedly announced that Herceg-Bosna would cease to exist, but it is believed that it still effectively operates, perpetuating the weakness of the Federation's formal institutions.

Power is even further decentralized and dispersed at the local level. Ten cantons exist, each with its own constitution, an assembly directly elected by the Federation voters, a prime minister, and ministries. An indication of the cantons' strength is their budget, which for some cantons is ten times that of the Federation, and which derives from their power to tax.

The RS constitutional structure is less convoluted than that of the Federation. The Bosnian Serb predominance was at first guaranteed in Article 1 of the RS constitution, where it was stated that 'Republika Srpska shall be the state of the Serb people and of all its citizens', a crucial provision that only changed after a 2000 Constitutional Court decision declared it unconstitutional (as discussed later). The RS maintains an 83 member unicameral National Assembly. Only after the 2000 Constitutional Court decision was an upper house created, composed of an equal number of Bosnian Serbs, Bosnian Croats, and Bosniaks. The President is elected directly and exercises limited but politically significant powers. Unlike the Federation, the RS does not have cantons, making its structure centralized and simpler. However, municipal self-government both in the Federation and the RS adds an additional governance layer. As a whole, Bosnia's Byzantine institutions are expected to provide Bosnian groups with extensive self-governing prerogatives and with the possibility of sharing common institutions governing matters of joint concern.

Dayton Implementation Problems

The Bosnian consociational institutional framework is inefficient. Because the various ethnic elites maintain zero-sum views of each other, institutions do not provide incentives for cooperation, effective governance is extremely difficult to achieve. Ethnic guarantees, such as minority vetoes, have the perverse effect of increasing the possibility for mutual intransigence. The establishment of decision-making procedures (to determine when the protection of a 'vital national interest' is legitimate, for example) might move the conflict away from substantive to procedural issues. 'Paradoxically, the adoption of measures that reduce the consequences of disagreement (qualified majorities, postponement of conflict) increases the frequency of disagreement'.⁷⁶

Many rounds of post-settlement elections confirmed nationalist parties do not need to moderate their stance **though nationalist parties have begun to fragment.** Consequently, since the end of the war, **domestic institutions have been the theatre for continuing confrontation between nationalist parties** – at the cost of institutional efficiency. The High Representative (HR) has responded by adopting increasing powers to impose decisions on recalcitrant Bosnian politicians, even by removing them from office. The recent decision by **Paddy Ashdown to remove Dragan Covic from the Croat post in the tripartite presidency illustrates the power of the HR.**

The paradox of international intervention in Bosnia revolves around the idea that such intervention is **meant to preserve and guarantee the peace agreement reached at Dayton. At the same time, the institutional structures set up by that agreement favor those political parties less likely to implement it.**

The institutional inefficiency and continuing influence of Bosnian ethno-nationalists complicate the process of transition from international dependency to local ownership. The High Representative is likely to end its mandate later this year and is currently in the process of creating a host of ombudsman offices to ease the process of handing international responsibilities and prerogatives over to domestic actors. However, further local ownership of the peace process and the process of gradual international withdrawal are dependent upon the presence of functioning institutions, the very same condition that international intervention was meant to create, but which is still lacking.

In addition, there is the question of the extent to which consociational institutions hinder achieving other objectives of the peace agreement. Because consociational institutions recognize and give priority to ethnic groups, they can undermine liberal human rights norms, which are typically cast in individual terms. While the DPA recognized and institutionalized group rights, at the same time it recognized extensive human rights provisions meant to protect individuals as such, not as members of a particular ethnic group. These two quite opposite rights-based approaches are in perpetual tension, and their coherence cannot be assumed. Instead, there is often a trade-off between group-based institutional components of a peace agreement and the defense of individual rights that inevitably are violated during war.⁷⁷

Bosnia exemplifies these difficulties for three reasons.

First, the division of the country in ethnically defined regions complicates the exercise of the **right to return for** those individuals displaced during the war because of their ethnic belonging.

Second, members of national minorities (labeled as **'Others'** in the Bosnian constitution) cannot be eligible for a variety of administrative jobs and political offices because they do not belong to the three main ethnic groups.

Third, the DPA gives **priority to the three main** (and complex) ethnic groupings, makes political representation dependent upon ethnic belonging, and thus discriminates against individuals who do not identify themselves ethnically

or, even if they do, might not be able to exercise a variety of rights because they reside in an area where they constitute a minority.

Reforming the Dayton Peace Agreement

What made the DPA survive despite its inefficiency in building viable state institutions and its discriminatory aspects? There is little evidence that the Bosnian elites' capacity to provide effective leadership is at the root of the preservation of peace for almost a decade. Instead, three different reasons explain postwar relative stability.

First, government changes in neighbouring Serbia and Croatia had a positive impact on Bosnia's international developments as Bosnia's two entities developed ties with their neighbours (the Federation with Croatia and the RS with Serbia), a possibility foreseen in the DPA. Second, an unspoken alliance between international peacebuilders and local nationalists preserved peace, but at the cost of entrenching the power of Bosnian ethno-nationalists leaders generally considered as the main obstacle to a long-term settlement.⁷⁸ Third, given the domestic inability of reaching compromise leading to policy choices, international agencies took over many domestic governing functions, and thus relived the local political class from domestic accountability, estranging the Bosnian elites in the process. Blocked by the international agencies' status quo attitude, and subjected to the conflicting demands of the local parties, the issue of institutional change gained a new impetus from the Serb Civic Council (SCC), created on 27 March 1994, to represent, in the words of its founder, 'that part of the Bosnian Serb nation which had never accepted the policy of ethnic cleansing and ethnic division of Bosnia'⁷⁹ has been at the forefront in the attempt to make Bosnian institutions more inclusive and representative. On 4 April 1997, the SCC issued a 'Declaration on the Human Right to Political and National Equality'. The SCC argued that the special status of Bosnian Serbs in the RS, and Bosniaks and Bosnian Croats in the Federation, is discriminatory and both politically and legally unwarranted. Moreover, institutional discrimination harms one of the major clauses of the DPA, that is, Annex 7 on the right to return of the displaced population.⁸⁰

The Declaration was addressed to all major international agencies and Western governments. No concrete steps were either discussed or taken until the SSC called upon Bosniak leader and member of the Presidency Alija Izetbegovic to submit the issue to the Constitutional Court and thus place it on its agenda.⁸¹ The Court found that the three main Bosnian ethnic groups are 'constituent peoples' of the Bosnian state and no one group can be discriminated against or have a second rate status. The Court's reasoning accounts for a direct indictment and unmistakable condemnation of ethnic segregation and the resulting violation of individual and group rights which were institutionalized in the entities' structure. As the Court argued, 'the accommodation of cultures and ethnic groups prohibits not only their assimilation but also their segregation. Thus, segregation is, in principle, not a legitimate aim in a democratic society. It is no question therefore that ethnic separation through

territorial delimitation does not meet standards of a democratic state and pluralist society' (para. 57).

The decision to guarantee legal equality to Bosnian Serbs, Bosnian Croats, and Bosniaks throughout the Bosnian territory is **the most significant development since the signing of the DPA and** endorses the rationale behind the original SCC declaration on the right to political and national equality. The High Representative Wolfgang Petrischt (2002) defined the **ruling as 'historic'**.⁸² The Court's decision opened the way for the long-awaited changes to the state's basic institutional setup **without, however, specifying which institutions and procedures would satisfy the principle of collective equality** of Bosniaks, Bosnian Serbs, and Bosnian Croats.

After the failure of constitutional commissions in the Federation and in the RS to agree on a set of specific changes, the High Representative imposed constitutional amendments.⁸³ The three constituent peoples and the 'others' should be proportionally represented in public institutions – from the municipal to the entity level.⁸⁴

In practice, **roughly 45 per cent of all ministerial jobs in the RS, the entity potentially most affected by the implementation of this provision, became reserved for non-Bosnian Serb employees.** The use of the population census carried out prior to the war shows the desire to contribute reversing ethnic cleansing by creating jobs for the **returnees. Language laws** and requirements were set. In the Federation, the High Representative imposed similar language requirements, in addition to changes in the **composition of the legislature, and that of the House of Peoples** of the Federation. A **second assembly in the RS ('Council of Peoples') was created.** It is composed of an **equal number of Bosnian Serbs, Bosniaks, and Bosnian Croats,** and tasked with ensuring the vital interest protection in that entity, while the House of Peoples would perform the same task in the Federation.

Perhaps the most important change regarded constitutional amendments defining the **'vital national interests' of constituent peoples.** The definition is missing from the entity constitutions. Consociationalists argue that the possibility of deadlock will limit the use of the **'vital interest' clause.** Although this clause has very rarely been invoked formally and officially, legislation has often been stopped prior to voting, and statewide institutions have hardly ever worked efficiently. The amendments provided a **list of 'vital national interests'**, although it left open the possibility that 'other issues' might become 'vital national interests' if so decided **by a two thirds majority** in one of the caucuses of the constituent peoples in the House of Peoples. **This clause opens the doors for the possibility of perpetual stalemate.** Other solutions were later adopted in Kosovo where minorities could veto 'vital interest' issues but another panel of representatives would make overall decisions by majority. A similar procedure for Bosnia would likely be useful to ensure governability.

The (Bosnian) court's decision promised to break the long-running blockage on what the Bosnian state is for and whether it should even exist. The constitutional changes created a system of **'constitutional tri-communalism'** giving Bosnia's three main ethnic groups an equally privileged status throughout the Bosnian territory, and ending systematic discrimination based on ethnic belonging. Significantly,

international agencies hoped that the constitutional changes would reverse the relationship between leaders and followers by forcing the former to rely more directly on the approval of the latter. For example, the Head of the OHR legal department and the most influential international expert on constitutional reform, argued that the changes will 'contribute to the affirmation of multi-ethnic parties' and 'change the attitude of politicians towards their voters, because they will have to win over their followers among members of other peoples'.⁸⁵

The creation of inclusive institutions, and the expectations that everyone will be treated in a reasonably fair manner, can lead to two potentially important long-term developments.

First, inclusive institutions are more legitimate and likely to be perceived as such by Bosnian citizens. The support of all three groups in favor of ending legalized discrimination throughout the Bosnian territory suggests that Bosnian citizens accept the preservation of Bosnia as a multi-ethnic state and supports the strategy of building an effective and representative state authority. Second, the end of legalized ethnic discrimination might also have a positive impact on the Bosnians' capacity to freely choose their place of residence. The implementation of the court's decision creates the possibility for Bosnians to move freely and settle across the country. Bosnian citizens might feel more protected in their basic rights regardless of their place of residence.

While constitutional amendments can help the overall perception of the legitimacy of the Bosnian state and the process of return, there remains the question of whether a principle that further entrenches ethnicity as the basis of representation promote the well-being of Bosnia and its citizens as a whole. Does that principle also move the country further away from the nationalist parties that have dominated the political scene throughout the 1990s, and create the conditions for long-term peace, stability, and further democratization?

Instead of opening new opportunities for non-nationalist identities to emerge and consolidate themselves, the constitutional changes further subjected individual identity in ethnic rather than civic terms. As a result, the structure of multi-ethnic consociationalism diminishes these individuals' capacity for political representation and participation, and perpetuates the condition for the continuing influence of ethno-nationalist parties. It is unlikely that these parties will need to rely on cross-national support, as foreign constitutional engineers have predicted. Instead, they can continue their successful strategy of marginalizing domestic alternatives by raising ethnic issues and presenting themselves as the main defenders of their respective constituencies.

The October 2002 nationalists' victory at the general elections demonstrated the limits of this reform process. The regular use of the 'emergency procedure', strongly encouraged by international agencies and requiring legislators to either accept or reject laws but not to propose amendments, is in itself a sign of the still limited functionality of Bosnian institutions, and underlying conflictual environment that complicates the legislative process. In its current form, Bosnian institutions might not be able to survive the departure of international agencies.

Arguably, Wolfgang Petrich's attempt to broker a multi-ethnic alliance, a loose coalition of non-ethnic social democrat parties *Alliance for Change* – worked for a short time, but then floundered, showing that the international community recognizes the limits of consociation and the need for alternative political strategies that transcend it.

Conclusion

In comparing the Northern Irish and Bosnian cases, the efficacy of consociationalism is manifest in legitimacy. Where public support is the linchpin of legitimacy, the endorsement of the GFA by referendum created the necessary input legitimacy for the process it codified. The inclusive, comprehensive and multilayered nature of the Agreement was designed to minimize this problem. Incorporating all the actors – from belligerents to benefactors – in the process created a network of association, endorsed by institutional processes, and legitimized by plebiscite. The legitimacy afforded to the GFA by way of plebiscite reversed one of Lijphart's favoring conditions – the relationship between elites and masses. Sceptical of masses, Lijphart tends to focus on politically relevant elites at the expense of the demotic.

In the Bosnian example the constituent peoples' case exemplified the need for incorporating all actors into the process of conflict regulation to endorse the legitimacy of the power-sharing institution and its associated mechanisms.

The importance of legitimacy for successful institutional learning encourages best practice initiatives, institutional innovation and capacity, as guarantors in the guise of third party actors can often endorse credible timetables for the most cumbersome concessions.⁸⁶ Comprehensive institutional mechanisms embed routines and organizational norms providing a useful means to address competing sovereignty claims in the Northern Ireland case. In Northern Ireland the institutional and procedural features of the GFA mediate constitutional conundrums. Institutional arrangements that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed.⁸⁷ The 'input' legitimacy afforded to the institutions and their actors tend to be reciprocated by way of 'output' legitimacy, in the functioning and governance of the institution.

In the Bosnian case the failure to engage the active involvement of the citizenry by way of plebiscite or civil society involvement undermined the DPA. The degree of elite compliance reflects bargaining preferences and incentives shaped by the factors determining their legitimacy. Citizens have been largely discouraged from actively contributing, the constituent people's case illustrated the importance of citizenry and civil society initiatives.

Power-sharing inter-ethnic arrangements need to be understood as a joint-decision process, with negotiations an example of an extreme form of the multiple-veto constellation.⁸⁸ Reframing consociational institutions from the perspective of institutional learning highlights the formation and embedding of routines, attitudes, and organizational mechanisms influencing power-implementation.⁸⁹

Regulating longstanding 'sons of the soil' wars typically involving conflict over land is often hindered by competing sovereignty claims over (divided) territories and (contested) borders.⁹⁰ Whether consociationalism is better described as a degenerating or progressive program of research depends on the degree to which mechanisms of institutional learning are present. The GFA provides a modern and previously multilateral intergovernmental regime solution to the sovereignty issue. It follows that the nature of the power-sharing arrangement reached or the 'modality of compromise' is dependent upon the nature of institutional mechanisms created to regulate the conflict, policy learning, the historic or path dependent impact of previous institutional arrangements implemented, and legitimacy.⁹¹

NOTES

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1. N.P. Glenditsch and P. Wallenstein *et al.* *Armed Conflict 1949–2000: A New Dataset* (2000) <www.pcr.uu.se>.
2. See V. Perthes (ed.), *Arab Elites: Negotiating the Politics of Change* (London: Lynne Rienner 2004) for an assessment of politically relevant elites in the Arab world.
3. G. Tsebelis, *Nested Games: Rational Choice in Comparative Perspective* (Berkeley: Univ. of California Press 1990).
4. See B. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton UP 2002) p.18 for an assessment of elites' commitment to peace criteria.
5. J. McGarry and B. O'Leary, *The Northern Ireland Conflict: Consociational Engagements* (Oxford: OUP 2004) p.2.
6. I.S. Lustick, 'Stability in Deeply Divided Societies: Consociationalism versus Control', *World Politics* 31/3 (1979) pp.325–44; McGarry and O'Leary (note 5).
7. F.W. Scharpf, 'Problem-Solving Effectiveness and Democratic Accountability in the EU', Working Paper Max-Planck-Institut für Gesellschaftsforschung MPIFG 03/1 (Feb. 2003) pp.1–38.
8. A. Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, CT/London: Yale UP 1977) p.495; Lustick (note 6) p.328; B. O'Leary, 'The Limits to Coercive Consociationalism in Northern Ireland', *Political Studies* 37/4 (1998) pp.562–88.
9. A. Lijphart, *The Politics of Accommodation* (Berkeley: Univ. of California Press 1968); A. Lijphart, 'Consociational Democracy', *World Politics* 21/2 (1969) pp. 207–25.
10. B. O'Leary, J. McGarry and K. Salih (eds.), *The Future of Kurdistan in Iraq* (Philadelphia: Univ. of Pennsylvania Press 2005a) p.26.
11. See ... Lijphart (note 8); and A. Lijphart, 'The Power-Sharing Approach' in J.P. Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies* (Lexington, MA: Lexington Books 1997).
12. McGarry and O'Leary (note 5).
13. P. Roeder and D. Rothchild (eds.), *Sustainable Peace: Power and Democracy After Civil Wars* (Ithaca, NY: Cornell UP 2005) p.91.
14. S. Bose, 'The Bosnian State a Decade After Dayton', *International Peacekeeping* 12/3 (Autumn 2005) pp.322–35 and N. Caspersen, 'Good Fences Make Good Neighbours? A Comparison of Conflict-Regulation Strategies in Post-war Bosnia', *Journal of Peace Research* 41/5 (2004) pp.569–88, for example, endorse the consociational structure set up in Bosnia after the 1995 Dayton Peace Agreement as the only realistic institutional framework able to preserve ethnic peace between Croats, Bosniaks and Serbs. Similarly, McGarry and O'Leary (note 5) see consociational power-sharing embodied in the 1998 Good Friday Agreement as an important step forward towards effective ethno-national conflict regulation in Northern Ireland.

15. S. Burg, 'Bosnia and Herzegovina: A Case of Failed Democratization', in K. Dawisha and B. Parrot (eds.), *Politics, Power, and the Struggle for Democracy in South-east Europe* (Cambridge: CUP 1997) p.135 in pp.122–45.
16. Lijphart (note 9) p.215.
17. Tsebelis (note 3) p.159.
18. M. Esman, *Ethnic Politics* (Ithaca, NY/London: Cornell UP 1994) p.43.
19. In the Northern Ireland case the Republican Sinn Fein Party was recognized by the US administration as a worthy participant in the power-sharing negotiations which increased its legitimacy externally and its authority to make difficult choices internally.
20. C. Harvey, *Human Rights, Equality and Democratic Renewal in Northern Ireland* (Oxford: Hart Publishing 2001)
21. R. Sisk 'Power Sharing after Civil Wars Matching Problems to Solutions', in J. Darby and R. MacGinty (eds.), *Contemporary Peace Making: Conflict, Violence and Peace Processes* (Basingstoke: Palgrave Macmillan 2003) p.139 in pp.139–51.
22. Ibid.
23. Guelke argues that similar transitional mechanisms were used in Kenya, Zimbabwe and Namibia (A.Guelke, 'Dissecting the South African Miracle: African Parallels', *Nationalism and Ethnic Politics* (Spring) 2/1 (1996) p.141 of pp.141–54). Hamber suggests that what makes South Africa exceptional is the degree of to which mutual dependence on former adversaries is acknowledged in this case (B. Hamber, 'Transformation and Reconciliation', in J. Darby and R. McGinty, *Contemporary Peacemaking: Conflict, Violence and Peace Processes* (London: Palgrave Macmillan 2003) p.227).
24. M. Kerr, *Imposing Consociation: Conflict and Coexistence in Northern Ireland and Lebanon* (Dublin: Irish Academic Press 2005).
25. Roeder and Rothchild (note 13).
26. Lijphart (note 8) is well aware of the dangers of immobility: 'the Lebanese case shows that consociational devices at best do not have a great deal of potency in building legitimacy and stability. At worst, they may actually have exacerbated divisions and hastened the collapse.'
27. McGarry and O'Leary (note 5) p.226.
28. S.M. Lipset, 'Some Social Requisites for Democracy: Economic Development and Political Legitimacy', *American Political Science Review* (1959) p.86 in pp.69–105.
29. Scharpf (note 7) p.5.
30. A religious marker tends to be used to categorize the cleavage, the British Unionist and more militant Loyalist bloc members tend to be broadly Protestant while the Irish Nationalist and militant Republican bloc members tend to be Catholic. The information cues and shortcuts provided by religious distinction (J. Fox, 'The Ethnic-Religious Nexus: The impact of Religion on Ethnic Conflict', *Civil Wars* 3/3 (Autumn 2000) p. 20 in pp.1–22) convolute the descriptions of the conflict thwarting attempts to define the conflict in binary terms (K. Boyle and T. Hadden, *Northern Ireland: the choice* (London: Penguin 1994) p.57).
31. Advocates assert that Northern Ireland remain within the United Kingdom of Great Britain and Northern Ireland.
32. Advocates assert the idea that Northern Ireland unify with the Irish Republic
33. The GFA makes no provision for an independent Northern Ireland or for that matter for increasing integration.
34. O'Leary (note 10) p.2; Robin Wilson (ed.), *Agreeing to Disagree? A Guide to the Northern Ireland Assembly* (London: Stationery Office 2001) p.2.
35. J. Ruane and J. Todd: *After the Good Friday Agreement: Analysing Political Change in Northern Ireland* (Univ. College Dublin Press 1999) p.ix. McGarry and O'Leary (note 5) p.3.
36. O'Leary (note 10).
37. John Hume Speech to Irish World Awards Dinner, London, 25 Feb. 2002.
38. Interviews, Dublin 24 May 2000.
39. Interviews, Belfast 17 May 2000; Interview Dublin, 9 Nov. 1998.
40. The discussions prior to the Agreement were organised in three strands, and the term is used in the agreement to discern the differing elements and institutions created.
41. Sinn Fein, the Progressive Unionist Party and the Ulster Democratic Party were allowed to participate subject to criteria outlined in the earlier interim Downing Street Declaration of 1993 (B. O'Duffy, 'Violence in Northern Ireland 1969–1994. Sectarian or Ethno-National?' *Ethnic and Racial Studies* 18/4 (Oct. 1995) p.767 in pp.740–71).

42. The difficulty involves incorporating political parties affiliated with paramilitary organizations and affording **these groups political legitimacy**. This was deemed to be an impartial concession to advocates of political violence by some Unionist parties in particular the Democratic Unionist Party (DUP).
43. B. O'Leary, 'The Nature of the British-Irish Agreement', *New Left Review* No. 233 (1999) pp.66–96.
44. Ibid. The d'Hondt formula rule means that parties get the right to nominate ministers according to their respective strength in seats – no vote of confidence is required by the Assembly. It also means that parties get to choose, in order of their strength, their preferred ministries. See O'Leary (note 10) and B. O'Leary, *Fordham Journal of International Law* 22 (1999) pp.1628–67.
45. Agreement Reached in the Multi-Party Negotiations, Strand Three, British-Irish Council No.1.
46. Elements of the AIA remained, such as the constitutional statement that 'there would be no derogation from the sovereignty of either government'. Some argue that the GFA is the fulfillment of the previous 1985 Anglo-Irish Agreement (O'Leary, note 10, p.2).
47. The structure of the British-Irish Council emulates the European Council and contains broadly similar features of the long-standing Scandinavian Nordic Council. See R. Fanning, 'The Good Friday Agreement: the Transformation of Irish-British Relations: Redefining Relationships: North–South and East–West Links in Ireland and Britain in the New Millennium', Paper delivered to the Dept. of Politics, UCD, Newman House, Dublin, 8 Jan. 1999.
48. For the repeal of the Government of Ireland Act of 1920, see the Agreement reached in the Multi Party Talks, 10 April 1998, Annex A2.
49. Fanning (note 12) p.4, B. O'Leary, '**Comparative Political Science and the British-Irish Agreement**' in J. McGarry (ed.), *Northern Ireland and the Divided World: Post-Agreement Northern Ireland in Comparative Perspective* (Oxford: OUP 2001) p.55 in pp.53–89.
50. O'Leary (note 10) p.12.
51. Sisk (note 21) p.143.
52. Lijphart (note 9) p.207; O'Leary (note 10).
53. Tsebelis (note 3) p.159.
54. Fanning (note 47) p.5
55. J.P. Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington DC: USIP 1997).
56. British security civil servant, ICBH, Witness Seminar, 26 April 1995, Institute of Historical Research, Senate House London. Interview, Garrett Fitzgerald 10 Nov. 1998.
57. A. Guelke, 'Northern Ireland and Island Status' in J. McGarry (ed.), *Northern Ireland and the Divided World* (Oxford: OUP 2001) p.258 in pp.228–52.; G. Walker, 'The British-Irish Council' in R. Wilford (ed.), *Aspects of the Belfast Agreement* (Oxford: OUP 2001) p.133.
58. P. Taylor, *The European Union in the 1990s* (Oxford: OUP 1996) p.76.
59. **D.L. Horowitz, 'Explaining the Northern Ireland Agreement: the Sources of an Unlikely Constitutional Consensus', *British Journal of Political Science* 32 (2002) p.196 in pp.193–220.; O'Leary (note 49) p.49.**
60. C. O'Clery, *The Greening of the White House* (Dublin: Gill and Macmillan 1996) p.87.
61. R.J. Fisher and L. Keashley, 'The Potential Complementarity of Mediation and Consultation within a Contingency Model of Third Party Consultation', *Journal of Peace Research* 28/1 (1991) pp.21–42.; Tsebelis (note 3) p.159.
62. Fr. Alex Reid, a Catholic priest, assisted in forging links between the Irish government and the Republican movement, even assisting in drafting peace initiatives (E. Maloney, *the Secret History of the IRA* [London: Norton] 2002: p.269).
63. Lijphart (note 9) p.215.
64. **R. MacGinty and J. Darby, *Guns and Government: the Management of the Northern Irish Peace Process* (Basingstoke: Palgrave Macmillan 2002) p.167; P. Mitchell, 'Coalition Membership in West European Parliamentary Democracies', Paper for the American Political Science Association meetings San Francisco, 30 Aug.–2 Sept. 2001.**
65. Ruane and Todd (note 35) p.63.
66. Ibid. p.23.
67. See the Proposals by the British and Irish Governments for a Comprehensive Agreement, published 15 Dec. 2004.
68. As the Northern Bank robbery of Dec. 2004 attests, the accommodation provided by the GFA to assist integrating the paramilitary elements of respective groups into the political fold can hinder rather than help a process of peace. See J. Tonge, "They haven't gone away, you know" Irish republican

- “dissidents” and “armed struggle”, Paper presented to the PSA Annual Conference, University of Lincoln 6–8 April 2004.
69. J. Udovički, ‘Conclusion’, in J. Udovički and J. Ridgeway (eds.), *Burn this House: The Making and Unmaking of Yugoslavia* (Durham, NC/London: Duke UP 1997) pp.279–316.
 70. Richard Holbrooke, *To End a War* (NY: Random House 1998).
 71. Milosevic’s decision-making was instrumental in the NATO response to 78 days of bombing and then to the occupation of the nominally Serb province of Kosovo.
 72. S. Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (New York: OUP 2002) p.216.
 73. These institutions created by the Bosnian constitution are contained in Annex 4 of the DPA.
 74. J. Lyon, ‘Will Bosnia Survive Dayton?’ *Current History* (March 2000) p.112 in pp.110–16.
 75. Because international peacebuilding agencies fear that the prospect for an extensive revision of the DPA could ‘open a Pandora’s box of competing claims’ (Lyon, note 74, p.115), they have repeatedly rejected proposals for a ‘new Dayton’, that is, a new all-encompassing agreement to move the peace process beyond the stalemate that has characterized most of the postwar transition. By so doing, they have guaranteed the survival of those dysfunctions feeding ethno-nationalists’ political and economic power.
 76. Tsebelis (note 3) p.181.
 77. As David Wippman (in ‘Practical and Legal Constraints on International Power-Sharing’, in D. Wippman (ed.), *International Law and Ethnic Conflict* [Ithaca, NY/London: Cornell UP 1998] pp.230–41 in pp.211–41) argues, consociational arrangements violate at least three individual human rights norms: the regional autonomy conferred to groups via consociational settlements can limit the capacity of individuals of one ethnic group to move (or return) to an area under the control of another ethnic group; institutions diminish the political power of individuals who are not members of the protected group(s); finally, they openly discriminate among members of groups on the basis of their ethnic belonging.
 78. Because international peacebuilding agencies fear that the prospect for an extensive revision of the DPA could ‘open a Pandora’s box of competing claims’ (Lyon, note 74, p.115), they have repeatedly rejected proposals for a ‘new Dayton’, that is, a new all-encompassing agreement to move the peace process beyond the stalemate that has characterized most of the postwar transition. By so doing, they have guaranteed the survival of those dysfunctions feeding ethno-nationalists’ political and economic power.
 79. M. Pejanovic, *Through Bosnian Eyes: The Political Memoirs of a Bosnian Serb* (Sarajevo: TDK 2002) p.194.
 80. As the SCC aptly put it, ‘within the framework of the existing discriminatory selection of constituent peoples in the constitutions of the Federation and RS, which determines members of all three peoples as second-class citizens – Bosniaks and Croats in the RS, Serbs in the Federation – one cannot expect the return of refugees and displaced persons to their homes ... they will not want to accept the position of second-class citizens or the impossibility of exercising their human rights.’
 81. Pejanovic (note 79) pp.235–6. The Constitutional Court is comprised by four members from the Federation (two Bosniaks and two Croats), two from Republika Srpska, and three – who cannot be citizens of Bosnia or any neighboring state – selected by the European Court of Human Rights. The Court’s explicit task is to decide ‘whether any provision of an Entity’s constitution or law is consistent’ with the Dayton constitution (art. VI. 3).
 82. American Ambassador Thomas Miller compared the importance of the decision for Bosnia to the one of *Brown vs. Board of Education* for racial integration in the United States.
 83. The RS government would consist of 16 ministers, 8 of whom would be Bosnian Serbs, 5 Bosniaks, and 3 Bosnian Croats. The Federation’s government would consist of 8 Bosniaks, 5 Bosnian Croats, and 3 Bosnian Serbs.
 84. According to the 1991 census, until Annex 7 (on refugee return) was fully implemented.
 85. I. Campbell, ‘Each People in the Entire BiH has Constitutional Basis to Protect its Own Interests’, Sarajevo: OHR, 4 April 2002.
 86. Walter (note 4).
 87. Scharpf (note 7) p.5.
 88. G. Tsebelis, *Veto Players: How Political Institutions Work* (New York: Russell Sage Foundation 2002).
 89. R. Hassink and A. Lagendijk, ‘The Dilemmas of Interregional Institutional Learning’, *Government and Policy* 19/1 (2001) pp.65–84.
 90. J.D. Fearon and D.D. Laitin, ‘Neotrusteeship and the Problem of Weak States’, *International Security* 28/4 (Spring 2004) pp.5–43.
 91. S.D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton UP 1999) p.26.

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