

Power Sharing and Democracy in Southeast Europe

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Abstract

The three power-sharing systems in Southeastern Europe in Kosovo, Macedonia, and Bosnia and Herzegovina are part of a wider regional pattern of minority inclusion. Power sharing in the three countries was established as a tool of post-conflict interethnic accommodation and enshrines group rights and political representation to varying degrees. The corporate consociational system in Bosnia stands in contrast to less rigid systems in Macedonia and Kosovo. The essay argues that, while consociationalism in Southeastern Europe represents complicated democratization and enshrines some flaws of the democratic system, it is not the sole or even the main obstacle to the consolidation of liberal democracies in Southeastern Europe.¹

Keywords: Power sharing, consociationalism, Southeastern Europe, former Yugoslavia, Bosnia and Herzegovina, Macedonia, Kosovo, democratization.

Power sharing as a system of government did not enter Southeastern Europe only in the aftermath of the recent wars in the former Yugoslavia. Rather, the roots of today's power sharing lie in the late socialist Yugoslav system. In addition, there are earlier traditions of interethnic accommodation, going back to the two multinational empires in the region, the Habsburg Monarchy and the Ottoman Empire. Prior to its dismemberment by occupying Axis powers, the first Yugoslavia failed as a result of its centralized majoritarian system that neglected to accommodate the different identity and political projects. In the mid-1980s, Croat historian, Ivo Banac, noted in his seminal study of interwar Yugoslavia that "the country was entirely unprepared for evolving into consociationalism."² Socialist Yugoslavia began as a Soviet-style federal system

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¹ A few sections of this essay are further developed in a book chapter by the author, "The Balkans: The Promotion of Power Sharing by Outsiders," in *Power Sharing in Deeply Divided Places*, ed. Joanne McEvoy and Brendan O'Leary (Philadelphia: University of Pennsylvania Press, 2013), 312-326.

² Ivo Banac, *The National Question of Yugoslavia* (Ithaca, NY: Cornell University Press, 1984), 414.

that was a mere façade behind which a centralized and authoritarian communist party ruled. This framework changed over time to eventually constitute a loose federation based on republics that had either one (or, in the case of Bosnia, first two then three) titular nations. However, it would be misleading to consider the Yugoslav arrangement a full consociational system, as it lacked democratic elections and other features of democracy. Yet, by the time Banac considered the appropriateness of consociationalism for the first Yugoslavia, the second Yugoslavia had come to closely resemble a soft authoritarian consociation. The republican Leagues of Communists were largely autonomous and diverged on economic questions, ideological rigidity, and the future of the political system. However, Yugoslavia as a system of power sharing, without consensus on the political system, was a fragile arrangement, and once elections were held in the republics (never at the federal level) in 1990, the federation failed to move toward a consensus-based consociation and instead dissolved.

The states that emerged in Yugoslavia's stead were created on the logic of their previous incarnation as socialist republics and retained the concept of titular nations. As a result, all save for Bosnia, became nation-states, if not in demographic reality at least in terms of ambition. However, the wars resulted in large population movements that were only partially reversed afterward, and this meant that the countries which emerged from Yugoslavia became more homogenous and their ethnicity more territorialized than before 1991.

The three cases of power sharing that emerged in the aftermath of the wars—Bosnia and Herzegovina (hereinafter Bosnia), Kosovo, and Macedonia—are thus not only the product of conflict but also of traditions, experiences, and institutional patterns that predate the wars. Similarly, as I argue below, they do not reflect expectations in the larger environment of majoritarian democracies, but rather they reflect a broader pattern of political life where ethnically based parties and institutions are both salient and where states have sought to include minority groups into the governance of the state, even if often only reluctantly. As a result, power sharing is deeply embedded in the regional context. After discussing the regional context of power sharing, this essay highlights the key mechanism and specificities of power sharing in the three aforementioned cases. Finally, it explores the interrelationship between democratization and power sharing. In sum, this essay seeks to take a pragmatic approach toward power sharing: Despite many of its flaws, especially in its particular implications in some of the cases, there is no credible alternative nor is it convincing to shift all the responsibility or even the blame for weak democracies and polarized interethnic relations onto power sharing alone.

Regional Patterns of Minority Inclusions

In Southeastern Europe, ethnic belonging (again) became a salient issue in the late communist and in the early post-communist periods. A number of late communist regimes in the region sought to enhance their legitimacy by

targeting minorities. In Romania, the Ceaușescu regime targeted the Hungarian minority in Transylvania that it suspected of disloyalty to the state and, through a rural modernization program, attempted to destroy minority settlements. In Bulgaria, Todor Zhivkov targeted the substantial Turkish minority and other Muslim communities. In addition to repressing the use of Turkish and Islamic practices, the oppressive policies escalated in 1989 with some 350,000 Turks leaving Bulgaria for Turkey. In Yugoslavia, Slobodan Milošević used nationalist grievances, especially among Serbs in Kosovo, to consolidate his hold on power and to assert his influence over as large a chunk of Yugoslavia as possible.³

In addition, communist regimes placed emphasis on national identity and also institutionalized ethnicity in their structures. While in Bulgaria and Romania this favored the dominant nation and reinforced the nation-state, at least from the 1950s onward, in Yugoslavia, this led to the aforementioned federal system that was supplemented with far-reaching minority rights. Although nationalism that did not fit the dominant ideological pattern was repressed, national identity was not just accepted—it was legitimized under the socialist system.

Thus, when the communist parties surrendered their monopolistic positions, ethnic politics did not newly burst onto the scene, as they already were ingrained in the politics of the region. It is thus little surprise that the political parties that emerged were organized largely along ethnic lines. Mainstream parties catered mostly to the ethnic majority and undertook little effort to include minorities. In response, parties and coalitions of minorities emerged, especially if these were sufficiently large to attain political representation. Ethnic parties, therefore, were a feature of the political scene in all countries of post-communist Southeastern Europe, even before the contours of the newly emerging political systems became clear.⁴ Some countries, such as Bulgaria, took a republican approach that at least constitutionally sought to promote a civic nation, without recognizing ethnic groups in particular. Others, especially, the post-Yugoslav states, gave greater weight to the recognition of ethnic groups. Despite these variations, we can observe the prevalence of minority (or ethnic) parties with surprising consistency in all the countries of the region over a period of more than twenty years.

While the emergence of minority parties was based on an antagonistic majority-minority relationship in the early phases of the transition period, these parties have not remained marginal or been excluded from decision making.

³ For the pattern of late communist use of nationalism, see Tom Gallagher, *Outcast Europe: The Balkans, 1789-1989* (London: Routledge, 2001), 227-277.

⁴ Florian Bieber, "Regulating Minority Parties in Central and Southeastern Europe," in *Political Parties in Conflict-Prone Societies: Regulation, Engineering and Democratic Development*, ed. Benjamin Reill and Per Nordlund (Tokyo: UNU Press, 2008), 95-125.

On the contrary, these parties often have been able to exercise considerable political influence, incommensurate with their size.

In Croatia, the Independent Democratic Serb Party participated in government between 2007 and 2011 and lent its support to the minority government of the conservative Croat Democratic Community (HDZ) between 2003 and 2007. In Bulgaria, the predominantly Turkish Movement for Rights and Freedoms (MRF) was part of the government from 1992 until 1994, and for most of the 2000s (2001-2009), and in Serbia, minority parties (Hungarian and Bosniak) have been part of all governing coalitions since 2000. Even in Albania, where the Greek minority numbers only around 2 percent of the population, the Greek Unity for Human Rights party participated in government between 2001 and 2005. In Montenegro, small Albanian parties have supported the government since 1998, and parties representing the Croat and Bosniak communities also have participated in government. Finally, in Macedonia, parties representing the Albanian community that accounts for around a quarter of the population have been included in all governments since 1992.

As I have argued elsewhere, these patterns of minority inclusion, generally speaking, do not qualify as power sharing, as they lack the continuity and stability that are required for such an arrangement.⁵ The inclusion of minorities, instead, often has been a reflection of the polarization between the largest majority parties, or a symbolic gesture to secure support from the EU for the country's accession process.

In addition to these examples of the inclusion of minority parties in government, a number of countries in Southeastern Europe have special rules to secure the representation of minorities in parliament. In most cases, this involves reserved seats for specific minorities. Thus, Romania, Slovenia, Croatia, and Kosovo all reserve seats for some or all larger minorities in the country. This ranges from one seat (of ninety) for each for the small Hungarian and Italian minorities in Slovenia, to twenty reserved seats (of 120) for Serbs and other minorities in Kosovo. In Serbia and Montenegro, minority parties have no or a lower threshold to enter parliament and, consequently, parties of large minorities are able to secure seats in parliament. Besides these six countries in Southeastern Europe having special mechanisms in place to secure minority representation in parliament, minority parties in other countries regularly enter parliament, especially when it comes to the largest minorities.

⁵ Florian Bieber, "Power Sharing at the Governmental Level," in *Political Participation of Minorities*, ed. Marc Weller and Katherine Nobbs (Oxford: Oxford University Press, 2010), 427-429. See Martin Brusis, "The European Union and Interethnic Power Sharing Arrangements in Accession Countries," *Journal on Ethnopolitics and Minority Issues in Europe*, no. 1 (2003), http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2003/nr1/Focus1-2003_Brusis.pdf (accessed March 24, 2013).

In addition to the substantial regional experience with the inclusion of minority parties in the executive branch and legislature, countries in Southeastern Europe, for the most part, have adopted far-reaching minority rights. These new minority-rights regimes were established gradually following the fall of communism, but mostly in the 2000s. This was the result of both EU accession and the Council of Europe Framework Convention for the Protection of National Minorities that calls for a robust monitoring mechanism of the status of minority rights. This new legislation not only requires extensive safeguards for the use of minority languages, education, and media, but also secures minority participation, which is protected at multiple levels. A number of countries have specialized ministries or offices in charge of human and minority rights. Minorities often are prominently represented in these bodies, including at the ministerial level. Additionally, some countries (Croatia, Serbia, Montenegro, and Kosovo) have or had special consultative bodies for minority matters, often associated with the president. More significantly, in Croatia, Serbia, and Montenegro, minority councils are established by law and elected (directly elected in Serbia and Croatia, and indirectly in Montenegro), which represent minority concerns and have competences that could be considered a form of cultural autonomy.

Despite the multitude of different mechanisms for minority inclusion in Southeastern Europe, the only three countries that can be considered to have power-sharing systems are Bosnia, Macedonia, and Kosovo. The broader regional context matters, however, as it highlights the fact that the choice is not between power-sharing or pure majoritarian systems, as there is a gradation of multiple forms of inclusion, from special minority bodies to parliamentary and governmental representation. These forms of institutionalizing ethnicity across Southeastern Europe highlight that the three cases of power sharing are not the exception to the rule, but rather systems that have a higher level of institutional safeguards for group inclusion and participation. This background also emphasizes the importance of conceptualizing power sharing as part of a continuum of institutional mechanisms for group inclusion. Within such a conceptualization, thus overcoming a simple majoritarian-consociational dichotomy, there is space for the gradations among power-sharing systems. As we shall see, all three nations have different degrees to which they adhere to the full scope of consociational arrangements.

Experiences with Power Sharing

As noted previously, three countries in Southeastern Europe are currently governed by power-sharing systems. Power sharing in Bosnia, Kosovo, and Macedonia is intrinsically linked to peace agreements, even if they partly draw on preconflict institutions, as noted above. In Bosnia, the current institutions were established in the Dayton Peace Accords that concluded the three-and-one-half-year war in 1995. While Bosnia briefly experimented with power

sharing after the first multiparty elections in 1990, that informal agreement among the victorious national parties unraveled quickly. In Macedonia, parties of the Albanian minority had been included in government since 1992, but, otherwise, Macedonia lacked the features of a power-sharing system. In fact, the sense of exclusion of Albanians constituted the backdrop against which the conflict in 2001 broke out between the Albanian National Liberation Army and state security forces. The Ohrid Framework Agreement (OFA) provided for greater rights for the Albanian community and also transformed the institutions into a power-sharing system. However, as discussed below, the features of power sharing are less pronounced and rigid than in Bosnia. In Kosovo, finally, the current arrangement came into place after the war of 1998-1999 and was first imposed by the United Nations administration in 2001, later to be largely transferred and extended in the 2008 Kosovo constitution. The current power-sharing system of Kosovo was drafted mostly by the U. N. mediator for the final status, Martti Ahtisaari, whose status proposal outlined the safeguards for the Serbian minority and linked these to Kosovo's independence.

Following, we will briefly explore the four key features of power sharing in the three countries, namely mechanisms of group inclusion in the executive branch, proportional representation in public administration, veto rights, and mechanisms of self-government. While Arend Lijphart has given these aspects different weights throughout his writings on consociationalism, we can consider all four to be key factors of a power-sharing system.⁶

In terms of the inclusion of different ethnic groups in the executive branch, Kosovo has the most explicit regulations. The constitution requires the government to include at least one Serb member and one from another nonmajority community, and in case the number of ministers exceeds twelve, a third minister from nonmajority communities. In addition, four deputy ministers must be members of nondominant communities (two Serbs and two others), with that number increasing by one each if the total number of ministers exceeds twelve. The constitution furthermore prescribes a process through which parties and groups representing minority communities must be consulted in naming these members of government. If the ministers or deputy ministers are not members of parliament, they require support from the members of parliament representing the non-Albanian communities.⁷ These rules laid out in the 2008 constitution closely follow the practice in place

⁶ Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy* 15, no. 2 (April 2004): 96-109, and id., *Thinking about Democracy* (London: Routledge, 2008). See also, John McGarry and Brendan O'Leary, "Consociational Theory, Northern Ireland's Conflict, and Its Agreement, Part 1: What Consociationalists Can Learn from Northern Ireland," *Government and Opposition* 41, no. 2 (2006): 44.

⁷ Constitution of Kosovo (2008), art. 96. See Emma Lantschner, "Protection of Minority Communities in Kosovo: Legally Ahead of European Standards—Practically Still a Long Way to Go," *Review of Central and East European Law* 33 (2008): 451-490.

since 2001, when the first Kosovo government was established on the basis of the United Nations Interim Administration Mission in Kosovo (UNMIK) constitutional framework. In practice, these requirements have been met; the current government (2010-2014) includes a Serb deputy prime minister (Slobodan Petrović), also responsible for local government, and Serb ministers responsible for Labor and Social Welfare (Nenad Rasić) and Community and Returns (Radojica Tomić). The minister for Public Administration is a member of the Turkish community (Mahir Yağcılar). Similarly, representatives of Serb parties have held key positions dealing with minority communities in the Office of the Prime Minister. The main challenge for the constitutionally mandated executive has been less the lack of formal implementation and more the representativeness of Serb ministers. As Kosovo remains contested by Serbia and many Serbs, especially in the north, municipalities adjacent to Serbia boycott Kosovo institutions and the government, and its Serb ministers have only limited authority and credibility in the parts of Kosovo populated by Serbs. In addition, minority members might be quite marginalized in the larger government.

Bosnia has less rigid formal requirements for the inclusion of different groups in the executive branch, but in practice, group-based inclusion is strong. The Bosnian state government is weak and fairly small, as most powers reside with the two entities of Bosnia and Herzegovina. The number of ministers grew gradually from only three in the immediate postwar period to ten today. The law on the Council of Ministers requires the government to be composed of equal numbers of members of each of the country's three constituent peoples. Thus, since 2003, the council has included three Bosniaks, three Serbs, and three Croats, with one deputy minister from a different group. The tenth member can be either from a minority community or a fourth member from one of the dominant groups. Finally, the deputy minister must be from a different group than the minister.⁸ In addition, the two entities must be represented in government, with the federation holding no more than two-thirds of all ministerial posts.⁹ As a result, government formation in Bosnia is often a difficult process, as it requires a compromise in parliament among parties representing the two entities and different constituent peoples. Extensive veto rights (see below) easily can result in deadlock during the process of government formation. For example, it took around fifteen months to form a government following the parliamentary elections in October 2010. In addition to the government, the head of a state is an institution structured by power-sharing considerations. The state presidency consists of three members, one Serb elected in the Serb

⁸ Either a member of the government or its general secretary needs to be a member of the group of "Others" (i.e., not a member of one of the three constituent peoples). *Zakon u Vijeću Ministra Bosne i Hercegovine* (2007), arts. 6 and 7.

⁹ *Constitution of Bosnia and Herzegovina* (1995), art. 4b.

Republic and one Croat and one Bosniak elected in the federation. The chair or this three-member body rotates on an eight-month basis. The rigid ethnic quotas for the presidency not only have been widely criticized, but also found to be in conflict with the European Convention on Human Rights by the European Court of Human Rights in the case, *Sejdić-Finci vs. Bosnia and Herzegovina*.¹⁰ The fact that citizens of Bosnia other than Serbs, Bosniaks, and Croats (in this case, a Jew and a Roma) cannot run for the presidency was found to be discriminatory. Efforts to amend the constitutions have failed since the ruling. As a result, the rigid consociational features remain in place, in large part due to the difficulties of one side to open the presidency to citizens who do not identify with the three dominant identity categories, as well as to the problem of securing representation of Croats, who are the smallest of the three groups and a junior partner in the federation.¹¹

Finally, in Macedonia, there are no formal rules that require the inclusion of minorities in government. However, between the first multiparty elections of 1990 and the Ohrid Framework Agreement of 2001, inclusion has been an emerging tradition. Different Albanian parties have participated in all governments since 1992 (between 1990 and 1992, an expert nonparty government was in place). This emerging tradition has been less a function of close relations between the Macedonian majority and Albanian minority parties, and more a result of (1) a pragmatic recognition by majority parties that the exclusion of the minority would exacerbate interethnic tensions, and (2) the polarization of the two large Macedonian parties that were less likely to form a coalition with each other than with Albanian partners.¹² The Albanian partner in government has changed several times, partly as a function of coalition preferences of the dominant parties and partly resulting from shifts within the Albanian community. Since 2002, the party that emerged from the insurgency has dominated among the Albanian electorate. The Democratic Union for Integration (DUI) has been the largest Albanian party since the first post-conflict elections in 2002, and it first formed a coalition with the Social Democratic Union of Macedonia (SDSM). After a brief period out of office (2006-2008), it returned to government, in coalition with the conservative-nationalist Internal Macedonia Revolutionary Organization-Democratic Party for Macedonian Unity (VMRO-DPMNE) since 2008.

¹⁰ European Court of Human Rights, Grand Chamber, Case of *Sejdić and Finci v. Bosnia and Herzegovina*, December 22, 2009, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491> (accessed March 24, 2013).

¹¹ Daniel Bochsler, "Non-discriminatory Rules and Ethnic Representation: The Election of the Bosnian State Presidency," *Ethnopolitics* 11, no. 1 (2012): 66-84.

¹² However, the main Macedonian parties cooperate in local elections to prevent a "take over" by Albanian parties. See, for example, Sinisa Jakov Marusic, "Macedonian Election Turns into Bruising Battle," *Balkan Insight*, March 21, 2013, <http://www.balkaninsight.com/en/article/macedonian-election-turns-into-bruising-battle> (accessed March 24, 2013).

The Ohrid Framework Agreement did not formally require a grand coalition, but it *de facto* institutionalized this practice. First, it gave considerable rights and to the Albanian community, to the degree that observers have called Macedonia a bi-national state.¹³ As a result, the exclusion of Albanian parties would run counter to the symbolic transformation of the country. On a practical level, key laws require not just a majority of the parliament, in general, but also the majority of the members of parliament who identify with a minority community. As a result, for a government to operate effectively, it needs to hold a majority not just in parliament, but also among MPs identifying as minority members. Considering the dominance of the Albanian community among minorities, a government would lack such a majority among MPs without an Albanian coalition partner. In fact, between 2006 and 2008, the ruling VMRO-DPMNE formed a coalition with the second largest Albanian party, the Democratic Party of Albanians (DPA), but lacked a majority among minority MPs. The associated difficulties with passing certain laws contributed to the ruling party's shifting its coalition to the larger DUI.

If we consider Brendan O'Leary's distinction among complete, concurrent, and weak consociational executives, all three in Kosovo, Macedonia, and Bosnia are either concurrent or weak.¹⁴ None of the countries requires all major parties to be included in government. In Bosnia and Herzegovina, this often has been the case, but election requires only one-third of the votes from both entities, not a majority from all groups. A majority of MPs in the House of Peoples from either community can evoke a violation of vital interests of the community, but this is not a hard veto right and is ultimately subject to adjudication by the Constitutional Court. In particular, the Croat community, which does not constitute a majority in either entity, can be more easily outvoted than the Bosniaks or Serbs, who can make use of mechanisms to protect their interests. In practice, at the state level, the executives, generally speaking, have been concurrent in terms of composition. Kosovo and Macedonia have a weak consociational executive, as in the former, majority support from minority MPs for a particular minister from a minority is only a requirement if the minister is not an MP. Thus, an MP from a marginal minority party could be named a minister without minority support. As a result, the system is more concerned

¹³ Ulf Brunnbauer, "The Implementation of the Ohrid Agreement: Ethnic Macedonian Resentments," *Journal on Ethnopolitics and Minority Issues in Europe*, no. 1 (2002), <http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2002/nr1/Focus1-2002Brunnbauer.pdf> (accessed March 24, 2013), and Jenny Engström, "Multi-ethnicity or Bi-nationalism? The Framework Agreement and the Future of the Macedonian State," *Journal on Ethnopolitics and Minority Issues in Europe*, no. 1 (2002), <http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2002/nr1/Focus1-2002Engstrom.pdf> (accessed March 24, 2013).

¹⁴ Brendan O'Leary, "Debating Consociational Politics: Normative and Explanatory Arguments," in *From Power Sharing to Democracy*, ed. Sid Noel (Montreal: McGill-Queens University Press, 2005), 12-13.

with minority representation than with minority consent. In Macedonia, there are no legal requirements for minority representation in the executive branch. During the twenty-one years (1992-2013) of Albanian party participation in the Macedonian executive, fifteen were based on a concurrent (i.e., a majority of each group) executive and six on a weak executive with the second largest party minority in government.¹⁵

Next, we consider the proportionality principle in public administration. Here, all three countries have well-developed legal mechanisms in place to secure proportional and/or equitable representation, even if this is not always the case in practice.

In Kosovo, by law, minority communities are guaranteed equitable representation in all public bodies and enterprises.¹⁶ As a consequence, recruitment procedures require public bodies to encourage the inclusion of minority communities. Formally, these procedures are largely followed (i.e., by placing bi-lingual job advertisements), but in practice, smaller communities remain underrepresented. A study of minority community employment found that, among 9,197 municipal civil servants, some 94.55 percent hailed from the majority community, 3.04 percent from the Serb community, 1.14 percent from the Bosniak community, and the remainder from smaller groups.¹⁷ In state-level institutions, the situation is similar, with 92.02 percent Albanians and 5.08 percent Serbs, 1.38 percent Turks, and less than one percent from the other communities. The share of Albanians is slightly higher at the managerial level than at the administrative level (94.6 percent vs. 91.01 percent).¹⁸

In Macedonia, the Ohrid Framework Agreement established the concept of “just and equitable representation” as an important principle, and stipulated specific measures to increase the number of non-Macedonians in the police force, in particular.¹⁹ Prior to the OFA, Albanians were significantly underrepresented in public administration: with a population share of around a quarter of the population, Albanians held only 7 percent of the jobs. Due to strong international support and the OFA guidelines, the number of Albanians (and others) in public administration grew rapidly after 2001. Marija Risteska notes that, while the first years of the OFA implementation were characterized by positive discrimination in a partially merit-based system, this has evolved into a “spoils system” without a merit base. Although between 2004 and 2012

¹⁵ In fact, O’Leary insists that, for a consociational executive, at least the largest party of each group (or several parties forming a plurality) ought to participate. *Ibid.*, 13.

¹⁶ Constitution of Kosovo (2008), art. 61.

¹⁷ Office for Community Affairs (Office of the Prime Minister), *Employment of Members of Non-majority Communities within Kosovo Civil Service and Publicly Owned Enterprise*, Prishtina, 2010, http://www.kryeministri-ks.net/zck/repository/docs/1-Policy_study_no1_FINAL.pdf (accessed March 24, 2013).

¹⁸ *Ibid.*

¹⁹ Ohrid Framework Agreement (2001), art. 4.

the share of Macedonians declined from 90.25 percent to 70.34 percent in the civil service and the representation of Albanians rose from 5.61 percent to 24.18 percent, this increase of the number of Albanians did not also affect smaller minorities and was often based on party affiliation rather than on merit.²⁰ Many of the new civil servants draw salaries, but do not have a post or work, burdening the payroll. In addition, party patronage has meant that quotas have been used by governing parties to secure influence rather than their improving the opportunities for minorities.²¹

In Bosnia, state-level administration was fully regulated only with the imposition of the Civil Service Law in May 2002 by the High Representative. Earlier, the main principle guiding recruitment was the requirement in the constitution that, “Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina.”²² The law emphasizes that the civil service is to “generally reflect the ethnic structure,” which suggests some degree of built-in flexibility, as opposed to the commitment to proportional representation in the civil administrations of the entities. Furthermore, the recruitment process does not detail any particular mechanism for achieving equitable representation, such as granting preferential treatment to candidates from underrepresented groups.²³ Instead, the law explicitly prohibits discrimination on the basis of ethnicity and religion.²⁴ According to data from the Civil Service Agency of Bosnia, Bosniaks constitute 44.9 percent, Serbs 33.7 percent, and Croats 18.7 percent of the 3,343 civil servants, and other others make up 3 percent.²⁵ These numbers fairly reflect the 1991 census, which, however, is greatly outdated as it was conducted prior to the war.

The brief overview over the three cases of Kosovo, Macedonia, and Bosnia highlights the difficulties of the civil service becoming inclusive, while not abusing the principles of equitable representation for party patronage, as in Macedonia. In addition, the basis for proportionality might be out-of-date, as in Bosnia, and favors, or rather requires, civil servants to identify with large groups, leaving little space for those who might opt for other identities.

Veto rights constitute another important feature of consociational systems.

²⁰ Marija Risteska, “Insiders and Outsiders in the Implementation of the Principle of Just and Equitable Representation of Minority Groups in Public Administration in Macedonia,” *International Journal of Public Administration* 36 (2013): 26-34.

²¹ SIGMA, Former Yugoslav Republic of Macedonia Public Service Assessment, May 2009, <http://www.oecd.org/dataoecd/32/28/43913255.pdf> (accessed March 24, 2013).

²² Constitution of Bosnia and Herzegovina (1995), art. IX 3.

²³ Zakon o državnoj službi (2002), art. 28.

²⁴ *Ibid.*, art. 23.

²⁵ Civil Service Agency of Bosnia and Herzegovina, June 3, 2013, http://ads.gov.ba/v2/index.php?option=com_content&view=article&id=1938&Itemid=167&lang=en (accessed March 24, 2013).

They seek to provide assurances to groups which find themselves in the minority that they will not be constantly outvoted, thereby creating a political system in which the other consociational features are hollowed out. Veto mechanisms have been controversial for their ability to block institutions, especially when they are used to block decision making, in general, not a specific law or decision, in particular. Bosnia has been struggling since the Dayton constitution came into force with extensive and destructive veto mechanisms. Bosnian parliamentary procedure recognizes two forms of veto rights: the entity veto and the veto by a constituent people. Consequently, all laws require the support of at least one-third of the MPs from each entity in both chambers of parliament (House of Peoples and House of Representatives), as well as the support of a majority of all three constituent peoples in the upper chamber. This vital interest, which can be invoked, is not defined in the constitution, but if a majority of another delegation challenges the invocation of the vital interest clause, an ad hoc commission is formed, and if it fails to resolve the matter, the Constitutional Court is responsible for deciding on the matter.²⁶ As a result, the Constitutional Court has been developing jurisprudence on what constitutes a vital interest and has taken a restrictive line. In fact, the vital interest clause was invoked only five times between 1996 and 2012, making it hardly a widely used mechanism.²⁷ In effect, most laws that have failed in parliament have been blocked through the entity veto, which allows a two-thirds majority from each entity to block any decision without further recourse. Thus, between 1996 and 2007, 52.3 percent of all legislative acts in the Bosnian parliament failed due to the “entity veto.”²⁸

In Macedonia, on the other hand, veto rights were established by the introduction of the so-called double majority, according to which parliamentary decisions in fields of particular relevance to the Albanian and other communities, and in areas of broad significance (parts of the constitution, law on municipalities), require the consents of an overall majority of the MPs and a majority among the MPs who are elected from minority communities.²⁹

²⁶ Constitution of Bosnia and Herzegovina (1995), art. IV.

²⁷ Maja Sahadžić, “ ‘Veto mehanizmi’ u parlamentima na državnoj i entitetskoj razini u BiH” [Veto mechanisms in parliament at the state and entity level in Bosnia and Herzegovina], in *Parlamentarizam u Bosni i Hercegovini* [Parliamentarism in Bosnia and Herzegovina], ed. Saša Gavrić and Damir Banović (Sarajevo: Sarajevski Otvoreni Centar, 2012), 314-316.

²⁸ Kasim Trnka, “Evaluacija procesa odlučivanja u Parlamentarnoj Skupštini BiH 1996-2007. Godine” [Evaluation of the decision-making process in the Parliamentary Assembly of Bosnia and Herzegovina 1996-2007], *Proces odlučivanja u Parlamentarnoj Skupštini Bosne i Hercegovine. Stanje-komparativna rješenja-prijedlozi* [Process of decision making in the Parliamentary Assembly of Bosnia and Herzegovina: Comparative solutions and proposals] (Sarajevo: Konrad Adenauer Stiftung, 2009), 89.

²⁹ Laws on culture, use of language, education, personal documents, and use of symbols require a double majority. Constitution of the Republic Macedonia (1991), art. 69 (Amendment X of 2001).

The voting principle, widely known as the Badinter majority, named after the French constitutional lawyer responsible for the proposed mechanisms in 2001, has been effective in securing Albanian and other minority consent to key legislation. Between 2006 and 2008, the government was formed by the conservative VMRO-DPMNE, a coalition of smaller parties (including parties representing Roma, Turks, Vlachs, and Bosniaks) and the second largest Albanian Party, the Democratic Party of Albanians (DPA), rather than the Democratic Union for Integration (DUI). Of a total of 120 seats in the parliament, the DUI controlled seventeen of thirty-six held by minority community representatives, and although it could not block decisions and laws that required a double majority alone, the government often struggled to secure the support of all minority MPs other than from the DUI. As a result of this constellation, VMRO-DPMNE included DUI in a government coalition in 2008.

The constitution of Kosovo, passed in April 2008, draws heavily on the arrangements in Macedonia. Thus, laws affecting minority communities require majority consent from communities that hold reserved seats.³⁰ This provision was not very effective in Kosovo, as a transitional clause in the constitution stipulates that the relevant laws can “initially” be adopted by a simple majority.³¹ This, of course, severely undermines the ability of minorities to intervene in the establishment of the legal framework. In addition, all laws can be referred to the Committee on Rights and Interests of Communities, in which minorities hold a majority of MPs (one-third Serb, one-third non-Albanian, and one-third Albanian). However, that committee cannot veto laws, but make only recommendations for amendment.³²

Altogether, veto rights have not been a source of severe restraint on parliamentary work, with the exception of the so-called “entity veto” in Bosnia. In effect, we can determine three types of veto mechanisms in the three countries: (1) absolute vetoes (i.e., veto mechanisms against which there is no recourse and which can be used in all fields); (2) segmental vetoes (i.e., veto rights that the minorities in Kosovo and Macedonia enjoy, but which are limited to particular policy fields; and (3) the vital interest veto in Bosnia, which is a less firm veto, but instead a mechanism to trigger legal assessment that can, but often has not, favored the claims of those who invoked the vital interest. The consultative processes in the relevant Committee cannot be considered a veto, because, at best, it can only slightly delay a law. Mostly, it is a mechanism to secure input from minority communities.

³⁰ The laws covered by the provision are those pertaining to municipalities, communities, use of language, local elections, cultural heritage, religious freedom, education, and symbols. Constitution of Kosovo (2008), art. 81.

³¹ Constitution of Kosovo (2008), art. 149.

³² *Ibid.*, art. 78.

The final feature of consociationalism under consideration in this essay is segmental autonomy, namely, the degree to which communities enjoy formal or informal self-government, be it along territorial or other lines. Here, we can identify two regional patterns. Bosnia and Herzegovina with a great degree of territorial decentralization constitutes one pattern. The entities have clearly defined borders, broad competences, power to legislate and levy taxes and to determine their economic policy, and their own constitutions under which they are governed. Formally, the entities are no longer ethnoterritorial units, as the Constitutional Court ruled in 2000 that the three constituent peoples would have equal status throughout the country. As a result, both the Federation and the Republika Srpska (RS) had to remove all institutional mechanisms privileging one community. This has meant that the bi-national consociational system in the Federation was supplemented with the representation of Serbs and others, while in the RS, the features of a nation-state were weakened and seats had to be set aside in the parliament and government for Bosniaks, Croats, and others.³³

The other model of segmental autonomy is the considerably lower degree of decentralization employed in Macedonia and Kosovo. Neither has an intermediate level of government between the central state and the municipalities. This has meant that the state remains the sole and unchallenged (at least *de jure*) legislator. However, the absence of an intermediate level of government also has resulted in a greater empowerment of municipalities. In Macedonia, municipalities have a say in the naming of the local police commander, and, in Kosovo, some Serb municipalities have competence in the fields of health care and higher education. In fact, debates and controversies in Kosovo and Macedonia over decentralization have been highly contentious; in Macedonia, they even resulted in a 2004 (failed) referendum initiated by nationalist Macedonian groups against the decentralization plans.

Municipal decentralization has been a meaningful development in the evolution of power-sharing systems. Following a regional pattern of centralization, this form of autonomy contains three core aspects: (1) the effective devolution of competences (i.e., in the sphere of education or policing) and financial resources to municipalities; (2) the redrawing of boundaries to create municipalities that accommodate the needs of minority communities; and (3) the establishment of mechanisms for minority inclusion at the municipal level. The advantages of municipal decentralization have been twofold. First, it can alleviate majority fears of secession and "federalization" of the country, which autonomy otherwise often evokes. Second, it can more effectively reflect population distribution than larger territorial autonomies.

³³ See Florian Bieber, *Post-War Bosnia* (Basingstoke, England: Palgrave, 2006), 121-133.

Municipal decentralization is not without its problems, however. Lacking the power to legislate and being inherently less powerful than regional autonomies, decentralized municipalities clearly remain subordinate to the central state. Some protection is secured in both Macedonia and Kosovo by preventing changes to the borders, competences, and the funding of municipalities without consent of the minority community. As it does not effectively allow for aggregation of minority interests but rather fragments the political representation of the minority community into multiple constituencies, it is doubtful whether municipal decentralization can be considered a full-fledged form of autonomy. While alleviating majority fears of secession, it might also increase conflict and contestation at the center, as groups do not necessarily enjoy autonomous areas of decision making. In Macedonia, this, indeed, has been the case, as legislative powers remain with the central state institutions and the center has been able to keep the power of the municipalities in check through funding mechanisms and centralized party control.³⁴ The high degree of *de facto* partition of Kosovo and territorial fragmentation has meant that, since 2001, the constitutional set-up and reality have differed—especially in 2008. While the Serb municipalities in central and southern Kosovo in part are established and functioning according to the 2008 constitution and the municipal decentralization it established, some key areas, such as education, are exercised through institutions funded by Serbia and follow Serbian rules and regulations. In the municipalities in Northern Kosovo under direct Serbian control, the autonomy of the region does not derive from the institutional framework of Kosovo, and, thus, segmental autonomy is not based on the Kosovo constitution.

While neighboring Serbia, Croatia, and Montenegro have established a limited cultural autonomy for minorities, none of the three power-sharing cases has adopted any form of nonterritorial segmental autonomy. The territorial arrangements in all three cases highlight the tension between group autonomy, on the one hand, and the difficulty of avoiding territorialized mono-ethnic rule that disadvantages local minorities, on the other. In Bosnia, this led to the proliferation of power-sharing arrangements from the center to the entities and cantons, while in Kosovo and Macedonia, it expressed itself through minority-controlled municipalities and mechanisms to include local minorities in decision making.

After reviewing the four features of consociational systems, we can note that the Bosnian system is the closest to a corporate consociation, with both

³⁴ See Aisling Lyon, “Between the Integration and Accommodation of Ethnic Difference: Decentralization in the Republic of Macedonia,” in *The Europeanization of Minority Issues in the Western Balkans*, ed. Florian Bieber and Vedran Džilić, special issue, *Journal on Ethnopolitics and Minority Issues in Europe*, no. 3 (2012), <http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2012/Lyon.pdf> (accessed March 24, 2013).

formal and informal practices in play to secure group inclusion, co-decision-making, and autonomy. Some authors have argued that Bosnia is an incomplete consociation because it does not grant symmetrical rights to Croats as to the other two groups.³⁵ However, Bosnia remains one of the most comprehensive and most institutionalized power-sharing systems. The lack of symmetry does not diminish the consociational system, but rather points to the *matryoshka doll* structure of Bosnia's consociation that is not exclusive at the state level, but extends in some cases to the municipal level. Macedonia and Kosovo, on the other hand, are weaker consociations, as they lack full segmental autonomy, only foresee a weak consociational executive, and have limited veto rights for minorities.

Democracy and Power Sharing

The three countries under consideration in this essay are not only marked by transition from conflict to peace, but also by the process of democratization. While power sharing is a distinct form of democratic governance, the interrelationship between democratization and power sharing is complicated and not necessarily mutually reinforcing.

The power-sharing settlements in place in Kosovo, Macedonia, and Bosnia are aimed at settling self-determination disputes and/or an interethnic conflict. While democracy is assumed, it is not the primary consideration of the peace agreements.

In all three cases, the conflict and the nature of political competition strongly suggests that a majoritarian democracy is not a viable alternative to the existing power-sharing arrangement. Rather the question is whether the power-sharing system can be modified to allow for greater democratic pluralism. As scholars of power sharing have noted, we can distinguish between *corporate* and liberal power sharing of consociations. Corporate consociations are characterized by institutional safeguards of group identity and, in fact, mechanisms that reinforce group membership. Liberal consociations, on the other hand, allow for the emergence of cross-cutting identities.³⁶ In the context of Southeastern Europe, we can clearly identify Bosnia as belonging to the category of corporate consociations. The ethnic quotas are rigid and the link between territory (i.e., entity or canton) and ethnicity functions as a mechanism to exclude those who do not follow the rigid ethnonationalist logic of the political system. I

³⁵ Mirjana Kasapović, "Bosna i Hercegovina: Deset godina nakon Dayton" [Bosnia and Herzegovina: Ten years after Dayton], *Status* (2006): 44-73.

³⁶ John McGarry, "Iraq: Liberal Consociation and Conflict Management," in *Iraq: Preventing Another Generation of Conflict*, ed. Ben Roswell, David Malone, and Markus Bouillon (Boulder, CO: Lynne Rienner, 2007), 172.

would argue that Kosovo similarly has corporate consociational features. As highlighted above, Kosovo falls short of a full consociation, with its limited segmental autonomy (at least formally) and reduced veto mechanisms. Yet, where group inclusion, power sharing, and autonomy are present, they are based on clear, rigid quotas. This has a different origin than in Bosnia and is mostly to be understood as a feature of demographics. Considering that the Serb minority constitutes probably between 5 and 7 percent of the population, less than rigid mechanisms of inclusion—coupled with the antagonist relationship between the Albanian majority and Serb minority—would run the risk of exclusion. The most interesting case in determining the type of consociation is Macedonia.

So does power sharing perform worse or better than regular majoritarian systems in the Western Balkans? While Pippa Norris paints a generally positive picture of power sharing and nonmajoritarian democracies globally,³⁷ this picture does not do justice to Southeastern Europe.

If we explore the interrelationship between democracy and power sharing as well as the assessments of the impact that power-sharing arrangements have had on the individual countries, we can draw some conclusions from comparative trends in terms of democratic consolidation. Here, the Bertelsmann Transformation Index (BTI) and the Nations in Transit (NIT) Report of Freedom House offer useful insights on the performance of power-sharing systems. Both studies have regularly assessed the state of democracy in all the countries of the Western Balkans (with the partial exception of Kosovo) for at least a decade, allowing a comparative analysis. As I and Irena Ristić have noted elsewhere, in Southeastern Europe, a broad pattern of the consolidation of unconsolidated democracies is observable. This is in line with the general observation of democratization literature that not only has focused on hybrid forms of democracy in the past decade, but also has noted that these are not merely temporary types of democracies not (yet) completely consolidated, but potentially stable forms of democracy: “Defective democracies are by no means necessarily transitional regimes. They are able to form stable links to their environment and are seen by considerable parts of the elites and the population as adequate solutions to the extreme accumulation of problems in post-autocratic democracies.”³⁸ In Southeastern Europe, beyond the three power-sharing systems addressed in this essay, we can observe such a stagnation where, after a major move toward democracy in 2000 (based on electoral revolutions in Croatia and Serbia), there has been little substantial movement since on the main democracy indices. The limited change on a

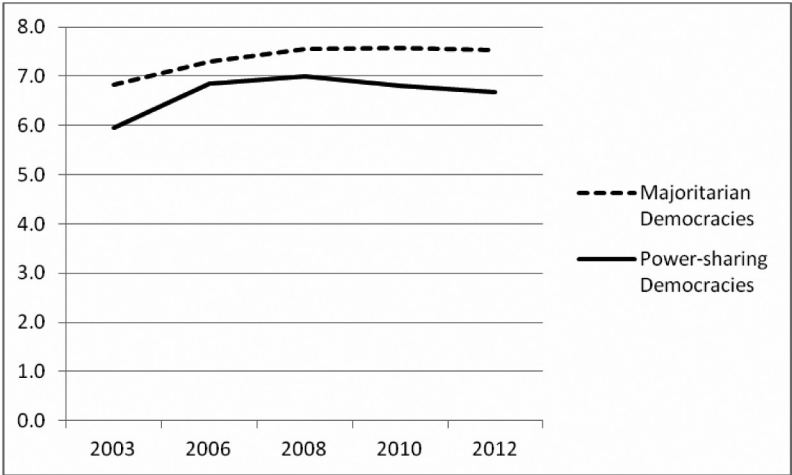
³⁷ Pippa Norris, *Driving Democracy: Do Power Sharing Institutions Work?* (Cambridge, England: Cambridge University Press, 2008).

³⁸ Wolfgang Merkel, “Embedded and Defective Democracies,” *Democratisation* 11, no. 5 (December 2004): 55.

regional scale not only includes the Western Balkans, but also Romania and Bulgaria, despite their membership in the EU since 2007.

If we now move from the larger picture to the question of interest, we can group the countries in the Western Balkans into majoritarian democracies (Albania, Montenegro, Serbia, and Croatia) and power-sharing democracies (Bosnia, Macedonia, and Kosovo). While this does not constitute a large sample and, at least in the first years, Kosovo is not assessed separately, the trends over a ten-year period allow for some tentative observations that largely coincide with qualitative studies of the power-sharing systems.

Figure 1. Trends in the Transformation Process in the Western Balkans, Bertelsmann Transformation Index



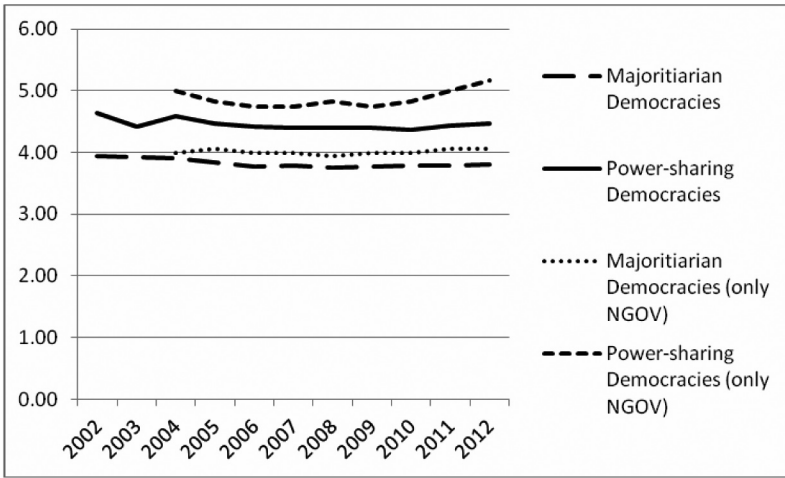
Source: Data are from Bertelsmann Transformation Index, <http://www.bertelsmann-transformation-index.de/bti/ranking/status-index/> (accessed March 24, 2013).

Note: Data reflect the status of democratic and economic transformation. As no separate data are available for Kosovo before 2010, Kosovo is omitted here. The higher the score, the more advanced the state of economic reform and democratization.

Both the BTI and NIT indices show a fairly consistent picture: Power-sharing democracies perform consistently worse than majoritarian democracies, but the gap between the two is neither particularly large nor has it changed significantly over time.

Of course, it is impossible to attribute the gap solely to power sharing. In particular, when considering the accompanying reports of NIT and BTI, the intervention by international actors is one reason that Kosovo and Bosnia have been rated worse than other countries in the region (of course, international

Figure 2. Democracy Score, Freedom House Nations in Transit



Source: Data are from the Freedom House Nations in Transit assessments, <http://www.freedomhouse.org/sites/default/files/2012%20%20NIT%20Tables.pdf> (accessed March 24, 2013).

Note: Majoritarian democracies include Albania, Serbia, Montenegro, and Croatia. Power-sharing democracies include Bosnia, Kosovo, and Macedonia. The lower the score, the higher the level of democratic consolidation. Serbia and Montenegro are assessed jointly until 2004, and Kosovo is evaluated only after 2004.

intervention is intrinsically linked to the power-sharing systems). If we focus only on governance (listed as NGOV in figure 2), which allows us to exclude other aspects of a democratic system less related to power sharing (i.e., media) in the NIT index, we note a similar pattern, with the exception that we actually see a slight worsening of governance in power-sharing systems since the late 2000s.

We thus need to be careful to distinguish between patterns that explain the general difficulties in the region for the establishment of a liberal democracy from those that might be particular for power-sharing systems. Some regional patterns, such as strong party-patronage systems, might be exacerbated by power sharing, while the nature of the democratic institutions has little effect on other patterns, such as corruption. Even a high level of interparty polarization cannot be considered to be unique to power-sharing systems. In fact, we find it both in majoritarian systems, such as Albania's, and among majority parties in power-sharing systems, such as in Macedonia.

As Vedran Džihić and others have observed, there are a number of specific weaknesses in power-sharing systems in regard to democratic governance, which merit noting here. In particular, authors call attention to the ability to

use nationalism to mobilize during elections in a type of ethnic prisoners' dilemma,³⁹ the existence of exclusive domains,⁴⁰ and the dependence on external arbitration.

Conclusion

We can thus note that power-sharing systems in Southeastern Europe are deeply embedded in a broader experience of recognizing and promoting diversity. Their performance is distinctly mixed. Although they have correlated with a lower level of democracy in the region in comparison to majoritarian systems, there are no convincing alternatives to consociationalism, at least in Bosnia and Macedonia. In Kosovo, the small size of the minority is apt to mean that the current system is unlikely to develop strong consociational features and is more likely to move toward a strong minority rights regime with a few consociational features. As the regional comparison also highlights, power sharing is not the source of the lack of democratic consolidation, but rather just one contributing factor. In the absence of alternative systems of governance short of redrawing state borders to create homogenous nation-states, power sharing appears to be the least bad alternative for the three countries discussed in this essay. This does not mean that much of the criticism of the current systems of power sharing is not justified. The blockages in the Bosnian system, with little opening to citizens who do not self-identify along the dominant ethnonationalist lines, are both human rights and governance problems. However, the institutional set-up is often a reflection of existing societal divisions that cannot be "engineered away," and the weaknesses of the current system, especially in Bosnia, suggest that power sharing cannot create a working consensus democracy where no consensus over the state exists.

³⁹ Azim Mujkić, *We, the Citizens of Ethnopolis* (Sarajevo: Human Rights Center, 2008), 149-183, http://www.ccr.ba/wp-content/uploads/2012/09/Asim-Mujkic_WE-THE-CITIZENS-OF-ETHNOPOLIS.pdf (accessed March 24, 2013).

⁴⁰ Vedran Džihic and Dieter Segert, "Lessons from 'Post-Yugoslav' Democratization Functional Problems of Stateness and the Limits of Democracy," *East European Politics and Societies* 26, no. 2 (May 2012): 244-245.