Assuming Bosnia: Taking the Polity Seriously in Ethnically Divided Societies

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A few years ago I was in Sarajevo, talking to a man who worked for the Office of the High Representative – OHR, the international protectorate responsible for governing Bosnia. This was around the time an initiative to integrate Bosnia’s armies into a single ministry was being debated, and I asked him how he knew that this policy – which was OHR’s policy – was supported by the people of Bosnia. His answer was revealing:

I don’t worry about that. We’re here because of what happened at Srebrenica.

We all remember Srebrenica, of course: how Serb forces overran a UN enclave and in three days systematically slaughtered over 7,000 Muslims – the only confirmed genocide in Europe since the Second World War.1 Now this man was telling me that Srebrenica was why he and the whole international community [IC] were in Bosnia. But what exactly does Srebrenica tell us to do about re-organizing the national defense, developing a common tax policy or fighting corruption – in short, about governing Bosnia now?

For some, the answer is clear – or rather, there’s simply no question. The IC feels confident that the message of Srebrenica as the metaphorical, often literal justification for its project of governance is compelling. Certainly there’s no need – and little time – to reflect on such enormities in the daily grind of reconstructing a country.

I think otherwise: I think this confidence lacks a theoretical or even pragmatic justification beyond the IC’s unexamined preferences, which utterly fail to consider, let alone reconcile, the potentially conflicting claim democratic autonomy raises against a sustained project of international governance. Therein lies a problem, and an indication of a different moral vision about the IC, its member states, and the people who live, sometimes willingly, sometimes not, within them.

For while Srebrenica means many things, it may not tell us much at all about the right way to govern another people’s country for them. Yet that is the project we have engaged in, with the emphasis, curiously, on the country more than the people.2

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This essay is a reflection on democracy and justice. It focuses on the Bosnian experience, which requires one to consider several actors: Bosnia as a state, Bosnians as a people or peoples, and especially the IC. For since the war, the indispensable context for reform in Bosnia – whether of administration, refugee returns, the economy, or the justice system – has been the international protectorate, which is to say the deliberate abrogation of autonomous, domestic processes for some defined, hopefully higher, purposes. Those purposes are expressed in the Dayton Accords, though increasingly the structures of Dayton Bosnia are seen as a real obstacle to stabilization, efficiency and prosperity – and to the dual values of integration and Srebrenica.

This essay examines the assumptions underlying a project of international governance. Those assumptions suggest a policy premised upon resistance to the fragmentation of the state under any circumstances, and an abiding commitment to integrating the populations within that state, which we have willed into being. How necessary – indeed, how related at all – are those commitments to the dictates of justice? What is their relationship to another set of commitments: that is, to democracy?

Our commitment to Bosnia is intense, but not profound. It rests on a powerful emotional conviction – and a sense of guilt – but a conviction whose connection to actual policies is arbitrary. Our – and Bosnians’ – desire for stability, prosperity and justice would be better served by allowing Bosnians to debate their future, and our commitment to democracy makes that essential. This essay considers Bosnia, but it has implications for the nature of states and our right to intervene in them, much farther afield.

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I. Bosnia and its Polity

What is the shape of the polity in Bosnia today? What has shaped it?

A. The Successes of Integrationist Intervention

Bosnia has been at peace for over a decade, and there has been tremendous progress towards integration of Bosnia’s socio-economic and political structures and communities. Few take the project’s ultimate success for granted, but from a position of total separation at war’s end, Bosnia has achieved considerable internal integration.


4 This is an essay, and therefore omits the standard literature review. Reference is made to relevant articles as the argument – a case study contributing to a general theoretical or empirical framework – develops.

5 Throughout this essay, ‘I’ refers to the author, to me, while ‘we’ refers to the IC. What is the IC, other than a trope of convenience? Here, it refers to the powers involved in the governance of Bosnia – the EU, the US, major states at the UN – as well as prominent NGOS. ‘We’ are complex; I do not mean to imply a monolith – but I do include myself and the reader.
Since the Dayton Accords, there has been almost no communal violence, and military analysts believe that even if the foreign security presence were withdrawn, the country would not descend into violence.\(^6\) This stabilization has occurred even as reintegration has progressed and refugees have returned across the former front lines to live or reclaim their property; each of the three former wartime zones – Bosniak (or Muslim), Serb, and Croat – now have small but noteworthy populations of ‘other’ ethnicities.

Indeed, there are indications that the former warring parties have reconciled themselves to an integral, multi-ethnic Bosnia. No parliamentary party advocates the dissolution of the country, and thus no significant share of the population has voted for a platform challenging the continuity of the Bosnian state. More broadly, there have been a series of integrative policy shifts, including common citizenship, transfers of authority to the central government, and re-creation of statewide infrastructure.\(^7\)

This integrative process has been led by the IC. The EU and US have made clear their preference for centralized economic, military and political structures, conditioning membership in international organizations on progress towards that goal.\(^8\) OHR has exercised its rights as a super-legislator to integrate governance.\(^9\) The IC’s role as instigator and enforcer has made Bosnia’s integration a project of external intervention. But a common theory suggests that domestic parties view IC as a convenient mechanism for achieving ‘necessary’ but sensitive policy shifts: they are glad to have OHR ‘impose’ reform.\(^10\) In any event, the protectorate is winding down, its criticized legislative fiat used less and less; since 2005, OHR has lifted bans imposed on large numbers of politicians.\(^11\) On this view, Bosnians are increasingly being trusted with responsibility to determine their own path towards integration.\(^12\) Bosnia has qualified as a functioning democracy.\(^13\)

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\(^7\) *See, e.g.*, INTERNATIONAL CRISIS GROUP, ENSURING BOSNIA’S FUTURE: A NEW INTERNATIONAL ENGAGEMENT STRATEGY (2007), crisisgroup.org/home/index.cfm?id=4655&l=1.


\(^9\) *See* Gerald Knaus & Felix Martin, Lessons from Bosnia and Herzegovina: Travails of the European Raj, 14 J. DEMOCRACY 60 (July 2003) [Knaus and Martin]. OHR’s expanded authority is referred to as the ‘Bonn powers,’ approved by the supervisory Peace Implementation Council at Bonn in 1997.


\(^12\) BW, “High Representative Says Bosnia Must Stand on Its Own Soon,” RFE/RL NEWSLINE, 19 Apr.
And although Srebrenica is always present as an emblem and badge of our moral justification, much of this project is conceived of as technical and practical in nature. Reforms have increasingly taken a structural turn, with the specific aim of rationalizing the inefficient, redundant governance structures of Bosnia’s incredibly complex confederal system, on the grounds that it impedes the internal rationalization necessary to achieve further integration into European structures. We may describe this process as internal integration on the path to European integration.

On this model, progressive institutional reintegration, reduction of ethnic separation, efficient governance, and European integration operate in a virtuous cycle, whose goal is a centralized Bosnian state embedded in the European architecture. It is a technical, design-oriented project, though one with a crystalline moral foundation. One must be realistic – all this takes time, no one imagines ethnic rapprochement is easy – but that it tends in this direction, and that this direction is our intention: that cannot be doubted.

B. Complications

This picture of progress towards integration is complicated – or clarified – by further facts and contexts. Since Dayton, the IC’s interventions have powerfully defined the available political space and pushed the country’s communities considerably farther towards integration than they otherwise would have gone.

It is true, for example, that no party advocates partition – but none could without being barred from the political process. OHR does not simply ‘mediate’ in some neutral

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2006 (“High Representative Christian Schwarz-Schilling told the UN Security Council. . . that the time is approaching when the international community will need to allow Bosnia-Herzegovina to succeed or fail on its own. . . . ‘This may mean we have to stand back and allow the Bosnian authorities to take decisions, when previously we would have acted and directed the process. . . . I look forward to assisting, advocating and advising the authorities. . . , but no longer doing their job for them.’”).

13 Bosnia is a member of the Council of Europe, its elections ‘free and fair.’ See Knaus and Martin 72.

14 This was the logic driving constitutional reform efforts in 2006 and at present. See, e.g., “Bosnia-Herzegovina: Rejection of Constitutional Reform (Taken Question)”, US Dep’t. State (briefing), 27 Apr. 2006, state.gov/tr/pa/ps/ps/2006/65397.htm [State Department Briefing] (“The United States is disappointed that the Bosnian parliament failed to pass landmark amendments to the constitution. . . . [T]he status quo that maintains inefficiency and ethnic separation, which only delays Bosnia and Herzegovina’s full Euro-Atlantic integration. . . . The United States will continue to stand with the overwhelming majority of Bosnian citizens who favor moving forward towards fully functional state and government structures. We will continue to encourage Bosnia. . . to make the reforms necessary to realize its goal of full Euro-Atlantic integration. We will stand with the people of Bosnia and Herzegovina as a firm partner for reform and firm opponent of the status quo, both now and in the future.”); Country Profile: Bosnia and Herzegovina, BBC, 1 Jan. 2008, news.bbc.co.uk/2/hi/europe/country_profiles/1066886.stm (describing ongoing constitutional negotiations aiming “to centralise functions and transform the country into a non-ethnic parliamentary democracy”).

fashion; it actively imposes legislation without accountability and removes elected officials from office. Discussing the defense reforms, that OHR official told me “no [local] politician would be so unsubtle as to directly oppose [linking NATO membership to integration]” – the clear sense was that to do so would not only be impolitic, but career-ending. Through its direct authority and power to preempt, OHR displaces local governance across a range of decisions. More broadly, the IC exercises its wealth and influence to shape Bosnians’ choices or override them. Foreign aid remains essential to the moribund economy; the security context is almost entirely determined by the foreign military presence, which creates the essential baseline for all other interventions.

The effect of outsiders’ influence is nearly total: “In Bosnia and Herzegovina, outsiders do more than participate in shaping the political agenda . . . . Outsiders actually set that agenda, impose it, and punish with sanctions those who refuse to implement it.” One cannot characterize the international agenda as ‘we support Bosnia’s integration but in the end it’s up to them.’ That fantastically understates the IC’s determination to achieve integration without reference to the desires of Bosnia’s people – a fundamentally coercive process cloaked as participation and dialogue. And this unrestrained logic of intervention has led the IC to override Bosnians’ sensibilities on even the most mundane issues that in any way implicate the consequences of war and ethnic cleansing, though not necessarily support for them. This logic has become almost entirely detached from its original rationale and become a pure governance project, whose only purpose is to aim the state at European integration – a goal it aims to achieve through internal integration.

Still, the integrative project has not succeeded, and even advocates of integration acknowledge how essential intervention remains. The very language they use – ‘resuscitating a failed state’ – indicates the gravity of the problem, or, put another way, the persistence of a different vision.

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16 “[H]undreds of officials have been dismissed by successive High Representatives.” EUROPEAN STABILITY INITIATIVE, DISCUSSION PAPER: LEGAL DYNAMITE. HOW A BOSNIAN COURT MAY BRING CLOSER THE END OF THE BOSNIAN PROTECTORATE (2007), esiweb.org/index.php?lang=en&id=156&document_ID=93. Even though politicians are now being rehabilitated, the process is entirely at OHR’s discretion.

17 Interview with anonymous OHR official, in Sarajevo, Bosn. & Herz. (Mar. 15, 2004), supra.


19 Cf. Knaus & Martin, supra, at 63 (“The predicament of Bosnia, as Lord Ashdown explained. . ., is that it is a country that ‘has been on economic life-support systems for years, and those life-support systems are being switched off one by one . . .’”).

20 Knaus & Martin, supra, at 61.

21 Cf. “Statement: PIC Steering Board Ambassadors’ Reaction to Dragan Covic’s Refusal to Step Down,” 23 March 2005, ohr.int/pic/default.asp?content_id=34366 (“PIC Steering Board Ambassadors deeply regret President Covic’s announcement that he intends to remain in office despite the criminal indictment. . . . They. . .call on Dr Covic. . .to re-consider his decision while that option remains available to him.”).

22 Wolfgang Petritsch, How To Resuscitate a Failed State, INT’L HERALD TRIB., 3 July 2002, iht.com/search/ihtsearch.php?id=63265&owner=&date=20020704160227; TRANSPARENCY
C. Absence of Popular Support

Missing from this picture is any comprehensive estimate of real Bosnians’ sensibilities. The project’s most important failing has been its inability to secure popular support; integration has occurred by international fiat, without the active participation of Bosnia’s communities – or with the support of one and resistance by others. This is not a side-effect but a structural consequence of the IC’s governance project.

We do not know to what extent Bosnians support or oppose integration, because we have never allowed meaningful debate. Confronted with incredibly powerful outside actors, Bosnians have acquiesced, but that is different from support. There have been elections, but in none have radically anti-integrationist policies been available – not because of their patent unpopularity, but rather external pressure. Even devolution has not elided the essential constraint, which is insistence on a single Bosnia and corollary prohibition of alternatives. Indeed, the quid pro quo of devolution – a grant to rather than a right of Bosnians, contingent on continued integration – ensures that attempts to open this question will be punished. Local debate, though lively, is constrained because it is ultimately pointless to advocate for policies one cannot give effect to. All this renders the actual preferences of Bosnians opaque.

Yet despite the evidentiary obstacle the protectorate creates, there is a generally accepted sense that Bosnians have almost no common civic identity, and that many (especially among the Serb and Croat majority) oppose fundamental elements of the integrative project. This is serious, because to the degree Bosnians oppose integration, they oppose their own state. Integration in the sense of creating a committed political community

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23 The Constitutional Court’s Constituent Peoples Decision, mandating common citizenship, is an example: the Court voted five to four, with the two Muslim and three international judges in majority, the Serb and Croat judges in minority. Odluka o konstitutivnosti naroda, Bos. & Herz Const. Ct. U-5/98.

24 RS Prime Minister Dodik has proposed a referendum on independence, but the IC insists any referendum would be invalid. See, e.g., International officials rebuff calls for RS independence referendum, SOUTHEAST EUROPEAN TIMES, 31 May 2006, at setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2006/05/31/feature-01.

25 See Roberto Belloni, Dubious Democracy by Fiat, TRANSITIONS ONLINE, Aug. 20, 2003, tol.cz (“Conspicuously absent [from reform debates] are Bosnians themselves, and there is little discussion about the reactions of local politicians, intellectuals, and civil society activists. Most of the talk is centered on well-intentioned foreign observers.”).

26 Shared history is almost entirely lacking. See, e.g., Nick Hawton, Bosnian War Memorial Plan Halted, BBC, 20 February 2006, news.bbc.co.uk/2/hi/europe/4731646.stm (reporting disagreement over a memorial at the Omarska camp).

27 Midhat Izmirlija & Leila Balić, Situations, Perspectives and Possibilities for Amendment of the Dayton Constitution, EIGHT YEARS OF DAYTON BIH: NEW VISIONS FOR BOSNIA AND HERZEGOVINA? ALTERNATIVE CONFERENCE 120, 136 & n.63 (“the basic problem of the structure of Bosnia and Herzegovina as a normal
has not succeeded: From what was a war-zone, the IC’s intervention has created a country, but not a polity.\textsuperscript{28}

Of course, there is no plausible scenario in which Bosnia, twelve years on, could have become a stable society at peace with itself and its past. But the failings of the integrative project are not simply indicative of the difficulties incumbent in such undertakings. Failure is a consequence of the project’s core assumptions about the necessity of internal integration as prerequisite for integration into Europe.

\textbf{D. The Givens of Bosnian Politics}

With the foregoing in mind, we may derive several ‘givens’ about politics in Bosnia, which any interpretation of integrationist-interventionism must take into account:

The first given is Bosnia itself – \textit{the territorial integrity of Bosnia is an absolute necessity, the only possible expression of justice in the aftermath of the war}. Dissonant arguments that question this territorial-political framework are, literally, excluded from the IC’s imagination and the political sphere.

The second given is that, as an expression of territorial integrity, \textit{internal integration is necessary a) to achieve efficient governance, and b) to ensure integration into European structures}. Indeed, efficient governance is largely measured by reforms considered compatible with European integration – or, as a shorthand, by internal integration itself.

The third given is that \textit{integrationist policies derive from the IC}. This pattern is so engrained that few internationals imagine it could be otherwise, despite the goal of Bosnian ‘ownership.’\textsuperscript{29} The IC expects \textit{intervention must supply integrative incentives for an indeterminate time}, during which Bosnians’ participation is limited to acquiescence.

In the next two sections we turn to two arguments made in defense of these ‘givens’ – arguments about efficiency and justice. What are the justifications for governing in the absence of a clear indication of the population’s wishes? How can one assume – as my

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European state . . . [is] the fact that many citizens, . . do not consider it their homeland”). OHR itself acknowledges the situation:

. . . unlike many Western democracies which reached political maturity long ago and have well-founded stability and the established trust of their citizens, Bosnia and Herzegovina’s democracy is still very fragile, its peace not yet fully secured and its institutions in their infancy. . . .

“DECISION To remove Dragan Covic from his position as a Member of the Presidency of Bosnia and Herzegovina” Paddy Ashdown, 29 Mar. 2005, ohr.int/decisions/removalsdecdefault.asp?content_id=34397 [Covic Decision].

\textsuperscript{28} In a survey, elementary students were asked ‘what is your state?’ “In Sarajevo the answer was Bosnia and Herzegovina, in Banja Luka, Serbia and Montenegro and in Žepčе, Croatia.” Izmirlija & Balić, supra, 136 & n.63. These are only children – some may have been born after Dayton.

\textsuperscript{29} A chart of Bosnian governance on the OHR website (ohr.int/ohr-info/charts/images/legislative-and-exec-bodies.gif) does not show any role for OHR.
OHR interlocutor blithely did – that international policies represent what Bosnians need? Even to ask such a question implies one might defer to their desires – and really, why would we tolerate the policies of the war, popular or otherwise? But we shall come to that, and to what Bosnia teaches us about the advisability and limits of such a project.

II. Arguments about Inefficiency – Their Underlying Ideology

Is Bosnia dysfunctional? Of what exactly does it dysfunction consist?

The normative thrust of our policy has been to delegitimate the ethno-constitutional division of Bosnia – specifically Dayton’s entrenched confederal structures – as an obstacle to the functionality Bosnia needs if it is to move beyond crisis and into Europe. It is an argument about efficiency.

A. The Technical Dysfunction Thesis

Dayton certainly introduced a structure highly resistant to efficient, centralized action. This was a response to the distrust among the wartime parties; Dayton was a compromise designed to end the war more than create a functioning state. Subsequent efforts to overcome wartime divisions have produced additional layers of inefficient governance. Many observers have noted these shortcomings; quite uniformly, they adopt what we might call a technical dysfunction thesis, approaching integration as a technical project of efficiency, modernization and normalization. Here is a typical view:

There is urgent need for a new constitution. The existing constitutional order was imposed by the U.S.-brokered Dayton agreement . . . [but] sanctioned a divided state hamstrung by layers of overlapping and contradictory constitutions, laws and administrations. The current dysfunction is dangerous and expensive. And no sober mind would pull NATO troops out until it is fixed.

30 See, e.g., State Department Briefing; Sofia Sebastian, Leaving Dayton Behind: Constitutional Reform in Bosnia and Herzegovina, FRIDE WORKING PAPER 46 (2007), 72.14.253.104/search?q=cache:wLLPLXuULEJ:www.css.ba/docs/wp46.sebastian.dayton.pdf, at 6 (EU calls to revise Bosnia’s constitution) and 23 (German ambassador’s call for Bosnia to be reorganized).

31 See Patrick Moore, Bosnia-Herzegovina: Serbs Protest Imposed Reforms, But Is It Smoke or Fire?, RFE/RL, 30 Oct. 2007, rferl.org/featuresarticle/2007/10/C8F20343-416D-4886-ABF8-093AAA9BE1C3.html (“The international community and Bosnian Muslim leaders. . . viewed Dayton as a stop-gap measure necessary to end the conflict and certainly not intended to be permanent. Western and Muslim authorities foresaw the evolution of Bosnia into a democratic, multiethnic state with an effective central government. Ethnic-Serbian and Croatian politicians feared just such a development. . .”).

32 For example, implementation of the Constitutional Court’s Constituent Peoples Decision increased complexity in entity government (Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia and Herzegovina (27 Mar. 2002, ohr.int/ohr-dept/legal/const/default.asp?content_id=7274#3)), while OHR’s mergers of divided municipalities and insistence on multi-ethnic representation strained the functionality of governance institutions.

33 Laura Silber, Bush Has Neglected the Balkans For Too Long; A Ticking Time Bomb, INT’L HERALD
Actually, this is one of the more nuanced approaches in that it leaves open the remedy for this dysfunction. But it is always the same: integration, centralization, reduction or dissolution of ethnically keyed entities and institutions, all in the name of reducing inefficiency. Inefficiency is the problem, and integrative reform is the solution.

Here, for example, is a communiqué issued on Dayton’s 10th anniversary – as close a thing to the IC actually speaking as we have:

“The Steering Board and the BiH authorities agreed that the priorities now must be overcoming residual inter-ethnic prejudices in favour of a Bosnia and Herzegovina which is home to all its citizens, to

- Modernise the Dayton constitution in order to increase the functionality and efficiency of BiH’s institutions and of BiH itself so as to create a state that puts citizens first

- Complete the administrative process that will provide BiH with a modern and efficient police service
- . . . increase the efficiency and cost effectiveness of the army, bringing them under full state control.

- Complete the unification of Mostar and provide its residents with the services and amenities of a normal European city

- Accelerate economic reforms. . . in order to bring prosperity to all of Bosnia and Herzegovina’s citizens
- Foster and strengthen civil society so that BiH citizens will participate fully in the democratic process and take the initiative in promoting economic development
- . . . channel desperately needed resources into education, and stop the serious political and administrative neglect of school children and students

- Ensure that the BiH authorities reassert political responsibility for undertaking tasks that are currently being carried out by the International Community, while maintaining the International Community’s engagement at a meaningful and constructive level consistent with the needs of Bosnia and Herzegovina’s transition to market democracy[.]”

Note the vocabulary: modern, functional, efficient, cost effective. Expressly political concepts exhibit a statist vocabulary: efficient militaries are linked to state [i.e. central]


control and democratic process to economic development (twice). Ethnicity is abnormal: ‘inter-ethnic prejudice’ is ‘residual’ and European normalcy depends upon unification. Local processes are invoked, but their relationship to the ‘International Community’ (in majuscule) remains profoundly hierarchical – transition under international tutelage.

Note too the seamless conjoining of ethnicity to administrative, technical measures – as if (and indeed this is the belief) these are designed to overcome difference and make Bosnia ‘home to all its citizens.’ But what if ethnic separation makes these administrative measures something entirely more complex and dangerous, which is precisely why they prove so difficult to implement? Is Bosnia still divided because its governance is inefficient, or is its governance inefficient because it is divided?

B. The Proofs of Inefficiency

How do we know Bosnia’s governance is inefficient? One might measure its response to poverty or corruption, but the preferred evidence is structural: the governance system itself. The Dayton constitution is legendarily complex, so riven with cross-checks as to produce – ensure is more accurate – paralysis on any controversial issue. This has included attempts to revise the model: The multiple and mutually negating governance structures have been instrumental in blocking moves to integrate functions at the state level, and only the IC’s dominance has forced progress towards integration. Although it is circular, the proof of inefficiency has been the failure to integrate.

The banning of officials exemplifies this logic, as in OHR’s rationale for removing Dragan Ćović from the Bosnian Presidency:

1. **International Isolation:** . . . Bosnia and Herzegovina is more dependent than most countries on international support and goodwill. The Steering Board of the [PIC], responsible for overseeing the implementation of the Dayton Peace Agreement, has called on Dr. Covic repeatedly to step down. The European Union has done the same; so too have the United States and Canada. The countries of the Steering Board. . . have indicated that they will not deal with Dr. Covic while he is under indictment.

. . . BiH is seeking membership of the European Union and NATO. It is close to qualifying to begin negotiations with the European Union on a Stabilisation and Association Agreement, and is hoping to qualify for NATO’s Partnership for Peace programme. . . . [I]t cannot afford to be represented by officials with whom the international community has withdrawn contact because of criminal indictments against them.

Dr. Covic is due to become Chairman of the Presidency. . . . [H]e is no longer able effectively to carry out [his] constitutional duties. . . . This poses a threat to BiH’s prospects of continued progress in integrating with the Euro Atlantic institutions, upon which the peace of the country depends.
3. Political Paralysis: . . .

The principles of proper governance and transparency, protection of the integrity and reputation and smooth functioning of the institutions of Bosnia and Herzegovina, and due deference for the international obligations of Bosnia and Herzegovina – so essential to the peace implementation process – mean that there is no alternative. . . .

Čović’s removal was discretionary, and the rationales for that discretion demonstrate a preoccupation with the interests – the perspectives – of the IC. Although individual cases are complex, many officials were removed for not supporting the Dayton Accords – more precisely, for not supporting internal integration, because the IC itself has become hostile to those parts of Dayton that resist integration. And this serves as a leitmotif for the entire international effort: The IC believes that resistance to integration – resistance by Bosnians themselves – is not only undesirable, but grounds for direct intervention.

There is a moral component to this: the conviction, encapsulated in Srebrenica, that Dayton’s structures enfranchise illegitimate and immoral ethnic separations that are the fruits of war and genocide. But day to day the IC’s rhetoric is focused on technical problems of ensuring more efficient collection of tax revenues and the like. While the moral commitment is almost universally assumed by internationals, many do sincerely believe the efficiency argument as well. The acceptance of Bosnia as the default category for analysis – as a ‘given’ – makes this belief both possible and inevitable.

And curiously, internationals believe locals’ resistance is not only immoral but against interest. The ‘desirable imposition’ theory – although almost surely wrong – demonstrates the duality of interventionism: that its authority is morally incontestable, but its proposals are technical, designed simply to achieve a more efficient state that

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35 Covic Decision (emphasis original).

36 Čović, for example, had been charged with corruption and taking bribes. See Čović Dragan i Drugi, COURT of BOSNIA & HERZ., X-K-05/02 sudbih.gov.ba/?opcija=predmeti&id=11&jezik=B.

37 OHR’s Decision paraphrases the charges as including “lack of commitment in office[.]” Covic Decision, supra, Preamble. Cf. “Decision removing Mr. Rasim Sahinovic from his position of Minister of Interior of Una Sana Canton,” (Letter from Wolfgang Petritsch and Robert Barry to Rasim Šahinović), Sarajevo 29 Nov. 1999, ohr.int/decisions/removalssdec/default.asp?content_id=287:

“Mr. Rasim Sahinovic has abused his power by persistently and seriously obstructing implementation of the General Framework Agreement for Peace. By pursuing an extra-legal agenda, he has consistently refused to take ownership of the laws of Bosnia. . . .”

This phrasing is boilerplate for that period; as the rationale for removal shifted from obstruction to corruption, this language disappeared. But it is revealing of the unreflective mindset of intervention: insisting that politicians take ownership while exercising plenipotentiary power to ban them from office.

38 Why would large numbers of officials who secretly wanted OHR to implement policies maintain the illusion to the point of being banned? And even if right, the theory implies a population obstreperously opposed to integration its leaders secretly desire; someone must be opposed if reform must be imposed.
surely everyone wants. The sincerity of this belief accounts for the exasperation protectorates feel when the natives do not show sufficient enthusiasm for their occupation – why don’t these obstreperous people do what is in their own interest?

C. The Design of Dysfunction: Dayton, or Bosnia?

Of course, resistance to integration is precisely what Dayton’s structures were designed to achieve. The Accords defined a common state while ensuring the separation of the communities within it. This is precisely what Dayton was supposed to achieve, and it has done so successfully. The Bosnian state is inefficient by design; it is a direct response to the tension between integration and autonomy – a means to protect the interests of the populations within it, for whom ‘efficiency’ correlates with ‘security threat.’

It is therefore nonsensical to approach reform as if it were a technical matter amenable to ‘best practices.’ One must confront squarely the constitutional question at its heart. The technical argument views Dayton as an interim instrument intended to give way to a centralized constitution, and the current dysfunction as proof that Bosnia must integrate. But Dayton Bosnia is only inefficient given the goal of creating an integrated state, which was by no means the goal of all Dayton’s signatories. So the proper considerations must be whether the goal of internal integration is necessary and legitimate, whether its imposition by outsiders presents any concern, and what alternatives appear. Dayton Bosnia today is unquestionably dysfunctional, but which part: Dayton, or Bosnia?

If we understand ‘Dayton’ to mean separate ethno-political territories, and ‘Bosnia’ a centralized state in which ethnicity is ‘residual,’ then the problem of inefficiency admits two solutions: unify the state – a solution that has occurred to everyone in the IC – or make more than one state – a solution which everyone in that community considers anathema, if they consider it at all. Bosnia could fully integrate its economies, administrations, and security apparatuses or fully separate them; either would solve the core problem. Which would do so more effectively? Which would Bosnians choose?

It is obvious that separation could work, if ‘work’ means create stable communities as partners for Europe. The size of the unit which must integrate to create a functional polity is not a given; it is equally plausible that integration at the level of the entities – giving them more autonomous status – would create stability. Such a solution might be easier if it comported with rather than contradicted the felt values of the individuals actually compelled to live within those units. The problem is that the IC’s integrative preferences apparently offends the interests of many Bosnians, while non-integrative approaches offend the IC’s values, which equate separation with genocide, with Srebrenica.

This is obscured by the technocratic turn, the assumption that there is a technical fix to a problem called ‘inefficiency.’ And the argument that this is necessary for Bosnia to join

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39 Cf. Nedim Dervisbegovic, Bosnians agree to reform presidency, parliament, REUTERS, 18 Mar. 2006 (“[T]he political structure. . .failed to stem ethnic bickering and became increasingly ineffective as Bosnia sought to implement reforms that would bring it closer to the EU and NATO.”).
the EU or NATO is particularly distracting, even pernicious, because it masquerades pure preference under a supposedly neutral standard. The terms of EU accession are not immutable; they are a function of EU policy. As a theoretical exercise, imagine two or three states on the territory of Bosnia, each preparing for integration into European structures – after all, is that not what each of the states of the former Yugoslavia has been doing? If the EU decided that was essential for accession – could anyone doubt that the will to do it could be found in Bosnia, and rather quickly?

Yet all interpretations about inefficiency assume Bosnia must be unitary. None of them would sound supportable if the borders were different: Nobody imagines the tax or security policies of Estonia and Ukraine need to be harmonized, or of Slovenia and Serbia (although not so long ago they were). Arguments about inefficiency do not sound where we are dealing with separate polities. In Bosnia, though, the IC is determined to reform without confronting the core constitutional questions: Should this state even be? Should these peoples constitute a state?

The technocratic impulse sees inefficiency in Dayton’s complexity, but many states have larger public sectors and (almost) equally complex governance. Rather the source is the resistance of political actors and their constituencies to integration. Simply put, many Bosnians do not believe in Bosnia, and consequently resist its entrenchment as their necessary future. Like it or not, consider their choices “absurd” or immoral or not, this make the IC’s chosen path to a stable and prosperous state more difficult. That sounds inefficient. So it is curious to insist on taking the harder road – insist, actually, that others take the harder road, for it is an intervention we are justifying – unless there were truly compelling reasons to do so. So: are there?

III. Arguments about Justice – Their Tension with Democratic Autonomy

What interventions are justified? Is Bosnia a moral unit? Does justice trump democracy?

A. The Limits of Intervention

We believe we have compelling reasons: the war and ethnic cleansing – the need to ensure returns, to punish the guilty, to promote reconciliation. And so although the overwhelming bulk of integrationist-interventionism is in some way concerned with normal governance, it rests upon a moral sensibility, encapsulated in Srebrenica.

40 Cf. Lajcak Refuses to Include Secession Option in BiH Constitution, SOUTHEAST EUR. TIMES, 31 Jan. 2008, setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/newsbriefs/2008/01/31/nb-01 (quoting the High Representative: “BiH is an internationally recognised state, its territorial integrity is guaranteed by [Dayton] and its existence cannot be questioned” and “that constitutional reform negotiations. . .are aimed at making BiH more efficient and more effective for all citizens, rather than to divide the country.”).

Yet these purposes by no means define the limits of our intervention, which has arrogated to itself ends and means far in excess of those a proper understanding justifies. For intervention – which affronts a community’s autonomy – is only justified to the degree it responds to intolerable evil, and no further.\footnote{Cf. Simon Chesterman, \textit{Just War or Just Peace? Humanitarian Intervention and International Law} 89ff. (2001). Limits on intervention are well established in philosophies of just war and autonomy. \textit{See, e.g., “War,” Stan. Encyc. Phil., plato.stanford.edu/entries/war/; Brian Orend, \textit{Justice after War}, 16 Ethics & Int’l Aff. 43 (2002); John Stuart Mill, \textit{On Liberty}, Ch. 1 (1859) (deriving the harm principle limiting intervention).} Arguments grounded on justice can disable democratic politics – if they could not, there would be little point in making them.\footnote{See Jack Donnelly, \textit{International Human Rights} 153-7 (1998)(human rights’ priority over democracy).} If one accepts the idea of \textit{popular sovereignty},\footnote{Cf. W. Michael Reisman, \textit{Sovereignty and Human Rights in Contemporary International Law}, 84 AJIL 866 (1990)(popular sovereignty implies the possibility of intervention to protect democracy).} then an intervention which constrains democratic processes, to be legitimate, must be narrowly tailored to those things justice truly requires. Perhaps bans on Nazi parties in Western Europe serve a purpose which justifies the intrusion on democratic interests, but a broader ban, because unnecessary, would be unjust;\footnote{See Patrick Macklem, \textit{Militant Democracy, Legal Pluralism, and the Paradox of Self-Determination}, Univ. Toronto Lgl. Stds. Res. Paper (2005), ssrn.com/abstract=702465.} this is especially so in an international context, in which intervention, by its nature, overrides the will of a sovereign community. So we must inquire if the democratic disabling inherent in Bosnia’s protectorate is the narrowest realization of a legitimate purpose.

\section*{B. Justice as Territory?}

Much as arguments about inefficiency are only coherent if one assumes Bosnia as the default unit of analysis, so too the IC assumes that Bosnia in its present borders is synonymous with justice: ‘Bosnia’ equals resistance to ethnic cleansing, and therefore ‘no Bosnia’ equals support for ethnic cleansing. After all, ethnic cleansing, as the signal evil of the war, was integrally connected with the creation of Serb and Croat states on Bosnia’s territory, which were not only states \textit{for} the Serbs or Croats, but exclusively \textit{of} them. But although this is an accurate picture of history, does it provide an understanding of what justice requires of us today? Asking about the proper scope of justice obliges us to separate the political \textit{goals} of secession from the \textit{means} used to effect them, since it was the immoral means that justified our intervention.\footnote{If in 1992 Bosnia’s Serbs had not only proposed to secede (that is, remained part of Yugoslavia), but had refrained from violence and respected the rights of non-Serbs, we would have had little basis to intervene.}

True, those responsible for ethnic cleansing desired the breakup of Bosnia, but it is a logical fallacy – and a moral failing – to treat these as an identity. A state with a Serb, Croat or Muslim majority, indeed any given configuration, is neither right nor wrong in
itself. Claims of justice can justify many forms of intervention, yet none has a necessary relationship to a particular territorial dispensation. For those whose concern is justice, the defense of Bosnia presents a paradox, because territorial integrity is perhaps the most morally empty principle in international law. What exactly are integrationists striving for when they insist on territorial unity?

The form we have chosen for our commitment to Srebrenica is the state of Bosnia. We have decided that Bosnia is synonymous with multi-ethnicity and ‘never again,’ instead of being what it is: a territory on which politics have to be organized. Making Bosnia’s territory the litmus test of justice has perverse effects on other commitments, such as intervention’s temporal limits in a democratic society. We are justified in being circumspect about poisoned fruits, but can we truly maintain that a particular territorial configuration must be forever preserved and another prohibited, without reference to what the people who live on it desire? Do we actually mean that because of the war no majority in Bosnia could ever partition the state? In six years the first Bosnians born after Dayton come of age; already there are Bosnian voters with no memory of the war. What if they decided to divide their country the way Slovenes and Macedonians decided before them? How long can Srebrenica prevail over democracy?

C. Objections Considered

There are objections to allowing open discussion about Bosnia’s territorial dispensation. Though sincerely and automatically felt by the IC, all rely on assumptions – about Bosnia as a necessary and just unit – that, as we have seen, are unfounded.

\[47 \text{ Cf. INTERNATIONAL INTERVENTION IN THE POST-COLD WAR WORLD: MORAL RESPONSIBILITY AND POWER POLITICS (Michael C. Davis, Wolfgang Dietrich, Bettina Scholdan, and Dieter Sepp, eds., 2003).} \]

\[48 \text{ Intervention solely to protect Bosnia’s territory would have been problematic, since at the same time Bosnia was withdrawing from Yugoslavia. The 1992 referendum produced a majority for independence in Bosnia (David Binder, U.S. Policymakers on Bosnia Admit Errors in Opposing Partition in 1992, N.Y.T., 29 August 1993, query.nytimes.com/gst/fullpage.html?res=9F0CE4D6123EF93AA1575BC0A965958260), but not in Yugoslavia, so to categorize that as an exercise of democracy requires one a priori to consider Bosnia the relevant unit.} \]

\text{a. an open process would deny the wishes of Bosnia’s people}

Partition would deny the wishes of that sizable segment of the population that wants a unitary state. But it would be imprudent to assume that majoritarian rationales justify Bosnia – indeed this possibility strategically motivates the IC’s reliance on Srebrenica. At present, we accord an almost absolute priority to integrationist claims, but if we allowed a debate, we might well find ourselves confronting a policy that had majority support (among Serbs and Croats) but opposed by a minority (the Muslims). It is not clear minority opposition should be relevant.

What are the wishes of Bosnia’s people? The IC’s own intervention is the principal obstacle to determining them, but even the indications we have – the continued popularity
of ethnically oriented parties, for example— are dismissed as defective. I have regularly heard the argument that the prostrate economy pushes people to favor nationalist solutions. Quite apart from whether it is empirically true—as opposed to self-serving—that bad economic times encourage nationalist thinking, it is not clear these choices are ‘wrong.’\textsuperscript{50} What is the correct response to bad economic times? This is an especially salient question in Bosnia, where the economy has been moribund as long as anyone can remember. Yet this logic is deployed to discredit popular positions and justify the IC’s suspension of deliberative processes.\textsuperscript{51}

\textit{b. an open process might lead to renewed war}

Is there not a risk that even a democratically approved partition would lead to violence? There are three responses. First, the increasing stability that boosters of integration trumpet begs the question of why Bosnia could not engage in a peaceful dialogue about disengagement. If stability were our only goal, separation could be achieved with little effort because there is still so little connection between communities; there would be little violence precisely because the war was so comprehensively effective.

Second, even if there were a real risk of violence from opponents of partition, this does not mean we should resist an otherwise legitimate partition. We surely do not believe that merely because a disgruntled group threatens violence, we must eschew any action they oppose. That was not our logic in 1992 when Bosnia withdrew from Yugoslavia.

Third, Bosnia may indeed be too fragile for a robust constitutional discussion— but that argues for finding a way out of the problem of Bosnia. Calling Bosnia fragile is simply a way of saying its own population does not believe in it. Why are we so committed—more than its own population— to propping Bosnia up and imbuing it with moral content and the attributes of a state?

\textit{c. an open process would threaten returnees}

Because Dayton’s separated governance structures have been seen as sites of resistance to refugee returns, there is an assumption that greater separation would mean even fewer


\textsuperscript{51} Individuals could be coerced by hardliners. See David Laitin and James D. Fearon, \textit{Explaining Interethnic Cooperation}, 90 AM. POL. SCI. REV. 715 (1996); R. Bhavani and D. Backer, \textit{Localized Ethnic Conflict and Genocide: Accounting for Differences in Rwanda and Burundi}, 44 J. CONFLICT RES. 283 (2000). But there is no reason to think secessionist sentiments are not genuine. Besides, there is coercion now: the IC denies Bosnians the possibility of voting for secessionist parties.

returns, and that Bosnians who have already returned\(^{53}\) would be threatened by division. This is a fallacy of extension, ignoring the disincentives full separation might remove.

Under the present dispensation, Serbs and Croats have incentives to resist returnees because their regional dominance is threatened by large-scale returns. We may deplore this defensive orientation, but we must acknowledge its salience: It is asking a great deal of a community to expose itself to a security threat for the sake of a principle. Resistance is unsurprising. But consider if the security dilemma were removed: For an independent RS or Herceg-Bosna, a minority would simply be a complicating fact of political life, not an existential threat; resistance would be less, and scope for accommodation greater.

Nor is it true that, were we to allow the RS or Herceg-Bosna independence, the IC would lose its ability to protect minorities. Sovereignty is a flexible concept. Bosnia is an independent country, yet our control within it is all-pervasive; likewise, Kosovo has international supervision expressly aiming to protect minorities as the price of its independence. Why should we suppose we wield influence in RS today, but could not in an RS whose independence was conditioned on respecting minority rights?

The current project of reintegration assumes these communities can live together in peace; returnees are, by definition, people prepared to live as minorities. It is therefore ironic that we assume border revisions would compel everyone to flee atavistically to their ethnic security zones. Certainly it is worth noting the vigor – the zeal – with which integration’s advocates claim that there can be no partition now because of the returnees, because while this is normally touted as a proof that the multiethnic ideal is alive, it reads better as a hostage policy.

\textit{d. an open process would reward ethnic cleansing}

But wouldn’t partition reward ethnic cleansing? This is the core moral objection: regardless of its other effects, partition after Srebrenica would simply be wrong. There are many communities in Bosnia that opposed the division of their country, prior to the war that sent them fleeing.\(^{54}\) Why don’t these communities have a veto over a secession that would remove their homes from their state?

Of course these communities have the right to participate in the political life of whatever state encompasses their homes, including the right to deliberate on changing those borders. Any proposal to secede that did not fully include such expelled communities would be illegitimate – but if their participation is included, then the potential outcome of secession, if derived democratically, is not necessarily problematic.


\(^{54}\) Dayton legitimated wartime divisions, but that does not justify further ‘rewards.’
This sounds like acquiescence in a two-stage process: ‘expel everyone who disagrees with you, then hold a vote.’ And yes, this is sometimes what happens: The map is quite literally constructed of such injustices – expulsions, exterminations, genocides – followed by democratic reconsecrations. Even accounting for all expelled communities, a majority for secession could likely be achieved in Republika Srpska or Herceg-Bosna; indeed, a majority of the entire country might vote to alter Bosnia’s borders. Are those people and their descendants permanently prevented from doing that because of means chosen to achieve separation in the past? We preferred Bosnians to democratically deliberate in 1992; should we object to their deliberating now?

But we can go beyond this brutal vision of democracy for the living without excuses for the dead. Bosnia’s people have lost much, but democratically approved partition takes nothing to which they – or any human – have an absolute claim. A proposal to reshape the state – so long as it respected democratic process and human rights – would not offend any principle of justice that might justify our intervention to resist. This does not imply indifference to justice, only proper focus: What response does Srebrenica empower? ‘Not rewarding ethnic cleansing’ empowers an intervener to do many things – punish perpetrators, ensure the displaced can return – but it is not a license to remake entire polities into their antebellum images or prevent all change as if history has not happened, because that goes beyond the claims of the injured.56

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55 Had what is now Republika Srpska been recognized as a plebiscitary subject in 1992, it could have produced an electoral majority for secession – complex as the ethnic mosaic was, it had a Serb majority. If the same territory were to hold a plebiscite today – even if all displaced persons voted – a majority for secession would be a foregone conclusion. One could make a similar argument for Herceg-Bosna.

56 See “War,” STANF. ENCYC. PHIL. (2005 rev.), plato.stanford.edu/entries/war/ (discussing jus post bellum governing postwar transitions and noting that radical restructuring is controversial). Post bellum policies often are not rationally related to the intervention’s original justification. Cf. Office for Democratic Institutions and Human Rights, Assessment of the Election Law for the 5 October 2002 Elections, 15 Jul. 2002, osce.org/documents/odihr/2002/07/1190_en.pdf (discussing mandatory inclusion of women on electoral lists). It does not matter if one thinks this is a good idea; a theory of autonomy provides a reason why a protectorate ought not even reach such a question absent a connection to post-conflict stabilization.
Nor is integration necessary: Bosnia’s elites have grudgingly accepted integration because the EU, NATO, and OHR have comprehensively insisted on it as the price of almost anything imaginable: membership, aid, even continuance in office. But this only shows the IC’s insistence; it tells nothing about necessity or rightness or Bosnians’ preferences. Can anyone doubt, if the IC conditioned membership on dividing Bosnia, that could be achieved not in a decade, but in a week? The ease with which Bosnia’s own people might dismantle their state if we even indicated neutrality in that direction should demonstrate how insupportable it is to pretend internal integration is ‘necessary’: the linkage between a unitary Bosnia and Europe is a creature of Europe’s preferences.

Analysis about Bosnia proceeds according to an abstraction that there are technical, neutral ‘necessities,’ when in fact they are imposed preferences dependent on valuing Bosnia itself. That is not the valuation of many Bosnians. One can prefer certain outcomes, but to insist on them in the present shape of Bosnia requires an entirely different argument – so the real question is, are we justified in making that demand?

f. other states are free to oppose an open process

It is certainly the IC’s preference that Bosnia not divide; why is that not justification enough? States may deploy their resources as they please. But this misses the point of what we are doing in Bosnia.

No theory of democracy denies that states are free to engage in diplomacy and create incentives for other states to behave in ways they prefer. This is very much the public logic of the intervention: that it is simply representing the preferences of the IC, to which Bosnians are free to respond as they like. That young man at OHR defended the integrative agenda – as it happened a major piece of defense legislation was to be passed that day, and our conversation was punctuated with cell phone calls updating him – by comparing the pressures on Bosnia with those on Norway. Norway, he said, made accommodations to enjoy the benefits of community; if it prefers not to integrate, fine, but if it wants membership, it gets on with necessary reforms.

Yet intervention goes beyond diplomacy. The IC deploys its treaty rights as a plenipotentiary license. It has even been invoking it authority to press for fundamental revision of Dayton: There is nothing more fundamental to Dayton Bosnia than the military separation, for example, yet this have been cast as an inefficiency that must be removed, as the price of European integration. It is insufficient to object that local actors acquiesce in reforms – this ignores the massive, sustained pressure brought to bear on them to do so. The role of the IC is deeply and comprehensively coercive: it is no exaggeration to say Bosnians do not have the choice of turning down the deal.

We recognize a value to decisional autonomy: 57 beyond some level, constraint or compulsion of another polity is wrong. The ‘Norwegian thesis’ is as insupportable as it is

self-serving: Bosnia is not free to reject EU membership in the way Norway is. Norway is not occupied pursuant to an international treaty; Norway does not have an appointed plenipotentiary promulgating its laws. Norway may do what it wishes, though it may pay a price. Bosnia is not free in that way: It will not surprise readers familiar with Bosnia that on the day we spoke, the law the OHR man was shepherding did pass. He was not merely interested; he was involved, intimately and authoritatively, in ensuring its passage. His phone rang to seek direction – or rather, to assure power that its will was being carried out, just across the river, in the form of deliberation.

States do seek to influence other states, but in Bosnia the analogy fails structurally. There is a point beyond which what occurs is not diplomacy, but control; that is what we are doing in Bosnia today. Is that all right? Can we justify a protectorate – and a constitutional process – that short-circuits the self-governance of Bosnia’s people, wherever it might lead?

D. Srebrenica and Democracy

Here is the core question: should the interests of Bosnia’s citizens or the values of the IC prevail – their democratic autonomy or our conception of justice? The claim of justice is historical: in Bosnia war and genocide are facts of history – indeed our rhetoric about Bosnia’s stability relies on their historicity. Can that trump present democratic claims?

I began with a reference to Srebrenica precisely because it presents the strongest case for justice. What does Srebrenica tell us about governing Bosnia – about our intervention and its limits? Because it is someone else’s country we are governing, with Srebrenica as our reason. Our abhorrence of ethnic cleansing serves as a clarifying tonic, yet it also blinds us to the obvious proposition that these are moral questions for the people of Bosnia too, and that their choices matter more simply because it is their land, just as it was their war.

Dayton, that ‘interim’ agreement, created a single state and granted us license to recreate – to construct – Bosnia. The intervention is a fantasist project, because it seeks to organize Bosnia as if the war had never happened. The paradox – the obvious unrealism of this goal – is that the IC’s core justification is premised on the war’s effects: on ethnic cleansing, on Srebrenica. Its rationale for intervening is the harm of the war, yet its metaphorical, sometimes literal goal is to return Bosnia to its antebellum, antediluvian state – though not, of course, as far back as Yugoslavia. There is no way to conduct politics in Bosnia unaffected by the war. There is no way to run a tax office, a defense policy or a sewer system untouched by the war’s shadow. This is true of the democratic process too: the choices Bosnians make are comprehensively affected by the war: where they vote, what they vote for, what they vote against. Bosnians’ faith in their own state and their despair are creatures of the war too, and of the peace that ended it.

Yet for all our fantasist ambition, we have proved deeply conservative about the space in which we work: Our intervention has been an internal imperium, whose essential constraint is Bosnia’s border. Yet the proposition that democracy operates equally well
within any borders is sorely tested by Bosnia, where self-identifying ethno-political communities resist integration into a single polity – where three nations exist in one state.

This is not Balkan Orientalism: there is nothing essentially different about Bosnians, who are not particularly bloody by Europe’s standards. Their ethno-political identities are not primordial, but constructed, fluid – so why would we think rigid territories respond effectively to that? Bosnia itself is a construction, and a rather shoddy one. The cruel but historical fact that Bosnians’ separation is the product of ethnic cleansing does not change its salience; the war is part of these peoples’ history, and we cannot pretend its effects are not real. The living have their claims too, along with the dead of Srebrenica.

I would prefer Bosnia if its people want it, but I see no reason to insist upon Bosnia if they do not. We might as well insist on Austria-Hungary, which governed Bosnia decently for decades, and under which life was better for most than what came after; the Ottomans ruled well for centuries, but no one calls for their return. Here, as so often in interrogating our opaque moral commitments, the counterexample of Yugoslavia is instructive: The IC has not pressed for the reintegration of the SFRY, even though each division of it increased ethnic homogeneity; likewise no one considers ‘Yugoslavia’ a condition of justice. Is it a morally more significant category than Yugoslavia was? Whence our absolute conviction about Bosnia?

It is obvious why we do not revive faded empires, but also profitable to consider how those obvious reasons apply to our current experiment in governance. For that is what a state – any state – really is: an experiment in governing people on territory. Nothing more, and of no value save what it achieves for those people. When it doesn’t work, when it fails to create a better life for the people in it, or – in a world committed to democracy – when they do not believe in it anymore – we should not continue the experiment for its own sake.

We have a legitimate claim to prevent the forced de-diversification of territory, but not to enforce multi-ethnicity in ways that real humans, under the totality of their circumstances, do not embrace. It is as wrong to force communities to live together as it is to force them apart – and no less wrong if one does so in the name of a higher vision, as we are doing in Bosnia and in Kosovo today. It is wrong because democratic autonomy has a value of its own.

Some have always seen our policy in Bosnia as a preference – a justified one overriding mere democracy. Our young man in Sarajevo doesn’t worry about what people think. This is as convenient as it is arrogant, since indications are that most of the people he rules desire something very different. What people in Bosnia think is something we ought to worry about, and not only so we can change it. Even if our preferences might work, we are unjustified in forcing them on Bosnia without asking the views of Bosnians.  

58 Cf. Paula Pickering, Peacebuilding in the Balkans: The View from the Ground Floor (2007)(arguing efforts to build multi-ethnic democracy need local support).

59 Might the intervention succeed despite its undemocratic nature? It could, and if Bosnians found
A deliberative policy respectful of democratic autonomy would treat Bosnians as political actors, rather than objects of a moral imperative. One side-benefit of taking democratic accountability seriously would be that, if freely deliberating Bosnians actually chose to live together, that would reaffirm Bosnia in a way acquiescence in outside pressure never will. And, of course, if they chose otherwise – that would be their choice. Bosnia’s Constitution was never subjected to democratic deliberation; advocates of integration use this fact to press for revision of its ethnic elements, but why not carry the logic to its conclusion: Put the Dayton Accords to a democratic test. How could that be wrong?

That is not the logic we have adopted in Bosnia. We have viewed Bosnia in moral but myopic terms, embracing – for all our professions of empathy – our own view. We have promoted integration for its own sake, relying on an insufficiently developed ‘theory of Srebrenica.’ The confident, unreflective logic of intervention has discovered everything within its ambit: What project, what initiative has the protectorate not undertaken? We have bent our every effort to overcoming resistance to Bosnia, defining success as the defeat of resistance, as keeping together whole peoples which, because of their history, might prefer otherwise. In truth, in its more exuberant forms, integrationist-interventionism abandons any pretence that what it prefers is what Bosnians desire, abandons any reliance on rationales beyond its own self-confidence, and simply rules.

Any analysis of Bosnia’s reconstruction must acknowledge that the very choice to construct Bosnia, as opposed to something else, has framed everything. Have we reconciled the warring parties? That depends on what one is seeking to reconcile them to. Is multi-layered governance inefficient? That depends on what one supposes its purpose to be. What is to blame for Bosnia’s dysfunction – indeed, what is its dysfunction?

And on and on. One cannot even formulate these questions without coming to grips with whether or not Bosnia is, or should be, the relevant unit. Assuming Bosnia predetermines one’s answers to questions about what we should do, about what things mean; assuming Bosnia is an essential element of justification in the intervention. Questioning Bosnia indicates an entirely different set of evaluations. Even the most casual visitor to Bosnia becomes immediately aware that many of its citizens question Bosnia on a regular basis – and acquiesce in it as a fait accompli imposed by an intervention which insists the only way forward, even the only chance to make a little money, is by not questioning Bosnia.

One might disagree with the entire argument of this essay about the plausibility or justice of a free, unfettered debate, yet still agree with its motivating thesis: the choice of Bosnia was not a necessary one. One lesson Bosnia teaches us – though one we have almost

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60 I mean more than the conventional critique of a “European Raj.” (Cf. Knaus and Martin, supra.) Critics of OHR’s democratic deficit seldom contemplate that given true choice, Bosnians might dissolve their own state. The IC is determined to afford Bosnia democracy, but not that much.
willfully not learned – is that preferences can become the basis for an entrenched, channeled set of seemingly necessary commitments. Our early decision to define the conflict in terms of a Bosnian state has been the determining factor in predicting which policies we prefer ever since, and even which options we perceive. Bosnia was and is a contingent choice, with alternatives one must confront to make a meaningful reckoning.⁶¹

There are entirely different stories one could tell about the lessons – the choices, the failings, the successes, the banalities – of reconstructions that never took place because they were never attempted. Of course, they could only be written if the IC had set itself an entirely different project. In reading this, it is worth remembering that constraint.

In all likelihood, many readers will fundamentally disagree with my assessment, or at least with the policy implications of questioning the democratic and justice-based underpinnings of our commitment to Bosnia. Certainly, mine is a minority view in an IC deeply, reflexively committed to vindicating its project for the Balkans. This only goes to show the complexity and importance, to so many of us, of what has happened and is happening in the former Yugoslavia. On this one point perhaps we could all agree: These are not technical questions, but deeply, profoundly moral ones.