



## **What Belgium Can Teach Bosnia: The Uses of Autonomy in ‘Divided House’ States**

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*Belgium and Bosnia can be understood as ‘divided house’ states, which contain proportionally similar groups with opposing views regarding whether the state should be more unitary or more decentralized. The Belgian example demonstrates that even where groups disagree on state structure, a mixture of various forms of group autonomy may facilitate stability and compromise within the state. Belgium addresses this dilemma in two ways: 1) non-territorial autonomous units in the form of the linguistic communities and 2) exclusive competencies for different units within the diverse Belgian state. This article argues that in Bosnia the rights of minorities in different territorial units, as well as refugee returns to areas where they are minorities, might be improved by structures with non-territorial autonomy that are similar to the Belgian linguistic communities. Similar to Belgium, these non-territorial units might hold exclusive competencies for educational, linguistic, cultural, and religious matters, and enable more political representation of minority individuals. The author concludes by proposing that analysts should more carefully examine actual examples from states with similarly divided populations in order to advocate working models for Bosnia*

## I. Introduction

How should government institutions be designed for societies that are severely divided along ethnic or linguistic lines? The architects of such institutions are faced with the question of whether they should force groups to cooperate in unitary structures, or whether they should instead represent and institutionalize cleavages between groups. The stakes in such decisions are high. Forcing groups to cooperate in unitary structures may alienate them from the democratic process, as they might find their demands better represented through protests or violence rather than through parliament. At the same time, institutions that codify ethnic or linguistic cleavages may reduce the possibility of group cooperation and exchange in the political process.

Adding a second layer of complexity, what if groups disagree on the form of institutions themselves? One group may favour a more unitary state and another may favour more autonomy or devolution. In majoritarian democracies, the largest group’s view will usually prevail. Even in proportional democracies, which give minorities representation that reflects their portion of the population, the views of the larger group will tend to dominate, given their larger presence in relation to minorities.<sup>1</sup> A decision regarding institutional structures

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<sup>1</sup> These effects may be mitigated through consociational structures, examined below.

can thus be made in spite of minority disagreement in a system of proportional representation (PR).

To add a third layer of complexity, what about systems in which group proportions are relatively similar, or which are split such that there is no one clear majority view on the level of state centralization? In such cases, making decisions on governmental forms becomes much more complex. Such ‘divided house’ states, such as Belgium or Bosnia, contain sizeable groups that disagree on the current and future status of state centralization.

In this paper, I first outline the status of Belgium and Bosnia as divided house states and the nature of the divided house dilemma. Electoral system designs are limited in their capacity to address the divisions in these states, where no one group acknowledges a status as a ‘minority’. I then discuss some of the innovative means that the Belgian state has used to address its own divided house dilemma, including applications of territorial *and* non-territorial autonomy. These autonomy structures address the concerns of the Flemings, who would prefer further state decentralization, while still preserving enough aspects of the centralized state to appease the more centrist Francophones and Walloons.<sup>2</sup> The Belgian structures also include the allocation of exclusive government competencies, which minimizes the number of zero-sum negotiations between groups. The non-territorial structures and the exclusive competencies of the Belgian model might also be applied to the Bosnian state to help mitigate some of the governance problems of its divided house dilemma. In Bosnia, it is the Bosniacs (Muslims) who support a more centralized state, while the Serbs and the Croats tend to favour more decentralization.

#### *A note on consociational structures*

Both Belgium and Bosnia contain *consociational* institutions to facilitate group representation. While forms of consociationalism vary, they often include mechanisms for the sharing of power between groups. Belgium was described by consociational theorist Arend Lijphart in 1980 as the “most thorough example of consociational democracy”, given its vast array of power-sharing structures, including parliamentary quotas for the different linguistic groups.<sup>3</sup> Decisions in Belgium cannot be made by one linguistic group without the consent of the other linguistic group. Bosnia also exhibits clear consociational structures, in

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<sup>2</sup> I will occasionally use the term ‘Francophone’ to denote both groups, as they both speak French, though admittedly their relationship is slightly more complex.

<sup>3</sup> Arend Lijphart, “Introduction: The Belgian Example of Cultural Coexistence in Comparative Perspective” in Lijphart (ed), *Conflict and Coexistence in Belgium* (Berkeley: University of California, 1980), p. 1.

the form of parliamentary seat allocation by ethnic group, veto rights for different groups, and a three-member collective presidency comprised of representatives of each group.<sup>4</sup>

While consociational models encourage representation and power sharing, they also encourage fragmentation. This problem is due to the fact that group differences must be formally recognized and institutionalized in order to guarantee their voice in governing structures. A number of theorists criticize the tendency of these structures to accentuate and possibly enhance ethnic differences. Consociationalism, they argue, does not guarantee that elites of the different groups will work together. The fact that ethnic parties continue to dominate Bosnian elections has led some observers to call for the removal of consociational structures there, to be replaced by structures that are blind to ethnicity. The International Crisis Group, for example, has described the ethnic quotas in the Bosnian parliament as “institutionalised discrimination,” and the US Institute of Peace explains such quotas as “hangovers” of Titoist Yugoslavia, rather than understanding them as governance options employed by other countries as well.<sup>5</sup> Attempting to erase ethnic cleavages in Belgium or in Bosnia will not simply make them go away. Rather, successful state structures must acknowledge and address their divided house dilemmas, as outlined below.

## **II. The Divided House Dilemma**

Divided house states may be defined by two main characteristics: 1) severe ethnic cleavages, such that political parties tend to be comprised of only one group – and the lack of one clear majority among them; and 2) the different views that groups have regarding whether the state should be more unitary or more decentralized. Belgium and Bosnia are both strong examples of such states.

### *A. Politicized Ethno-linguistic Cleavages without One Dominant Group*

#### *Belgium*

In Belgium, Dutch speakers comprise between 56 and 60 per cent of the population. Francophones make up approximately 40/41 per cent, with German-speakers around 1/2 per

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<sup>4</sup> Sumantra Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention* (New York: Oxford University Press: 2002), p. 63.

<sup>5</sup> International Crisis Group, “Is Dayton Failing? Bosnia Four Years after the Peace Agreement” available at [www.crisisweb.org](http://www.crisisweb.org), pp. 22-23, and the US Institute of Peace, “Bosnia’s Next Five Years: Dayton and Beyond” available at [www.usip.org](http://www.usip.org), pp. 5-6.

cent. Given the controversial nature of the linguistic question, it has been banned from the official census for several decades. In a rather unique scenario, the average Fleming is more likely to be bilingual than the average Francophone, in spite of the fact that the Flemings are a slightly larger proportion of the population. According to surveys, approximately 17 per cent of Flemings believe that they speak French well, and 50 per cent can understand some French, while only 6 to 7 per cent of French speakers understand Dutch.<sup>6</sup> It is also of note that Dutch-speakers make up only 10 per cent of the capital of Brussels. While French-speakers thus argue that Francophones make up the remaining 85 to 90 per cent of the Brussels population, some scholars say that their presence is reduced by an influx of immigrants from other states, particularly countries in Africa and the Middle East.<sup>7</sup>

Due to the linguistic situation, the Flemings felt ‘minoritized’ for years, and the collective memory of this marginalization conveys a feeling that they are “not quite at home” in Belgium, in spite of their slight demographic majority.<sup>8</sup> The historical dominance of French, the sizeable French majority in the capital of Brussels,<sup>9</sup> and the relatively small demographic advantage of Flemings all contribute to an atmosphere in which the French and the Flemings do not behave according to a clear minority/majority relationship. The long history of French dominance in Belgium is responsible for the fact that more Flemings speak French than the inverse. University courses in Dutch were not offered until 1930, and Flemish efforts to make the state bilingual did not come to fruition until 1963. Given French recalcitrance toward a bilingual state, once Dutch was finally recognized, this step effectively produced a Flemish territory where Dutch was used.<sup>10</sup>

While neither group exhibits clear dominance over the other, linguistic differences are strongly represented through political parties. There are no statewide political parties in

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<sup>6</sup> These figures are estimated through an extrapolation from an assessment of school registration, identity cards, drivers’ licences, and telephone books. Jacques Leclerc, “L’État belge: données démolinguistiques” available at [http://www.tlfg.ulaval.ca/axl/europe/belgiqueetat\\_demo.htm](http://www.tlfg.ulaval.ca/axl/europe/belgiqueetat_demo.htm). Another way to assess these figures is through voting patterns: Dirk Jacobs and Marc Swyngedouw, “Territorial and Non-territorial Federalism in Belgium: Reform of the Brussels Capital Region, 2001”, *Regional and Federal Studies* 13, no. 2 (Summer 2003), pp. 129-30.

<sup>7</sup> Jacques Leclerc, “L’État belge: données démolinguistiques”, available at [http://www.tlfg.ulaval.ca/axl/europe/belgiqueetat\\_demo.htm](http://www.tlfg.ulaval.ca/axl/europe/belgiqueetat_demo.htm). In terms of voting records, 14 per cent of the Brussels population generally chooses Flemish lists, cf. Jacobs and Swyngedouw, p. 130.

<sup>8</sup> Nicole Delruelle-Vosswinkel, “Le divorce belge: quelques aspects sociologiques de profonds malentendus” in Jacques Sojcher, et al, *A l’enseigne de la Belgique nouvelle*, (Brussels: Ministry of the French Community of Belgium, 1989), esp. pp. 194-95.

<sup>9</sup> In addition, within the Fleming population as a whole, only few live in Brussels: in fact fewer than three per cent. In contrast, approximately 25 per cent of French-speaking Belgians live there. Liesbet Hooghe, “Belgium: From Regionalism to Federalism,” *Regional Politics and Policy* 3, no. 1 (Spring 1993), p. 54.

<sup>10</sup> The compromise of Val Duchesse. Kris Deschouwer and Theo Maarten Jans, “L’avenir des institutions, vu de Flandre,” in André Leton (ed.), *La Belgique: un État Fédéral en Évolution* (Brussels: Bruylant, 2001), esp. pp. 214-15.

Belgium; all parties have instead been localized along linguistic and regional lines since 1978. Even Belgium's three traditional parties (Christian Democrats, Liberals, and Socialists) could not withstand these linguistic cleavages.<sup>11</sup> The Dutch parties are concentrated in the Flemish region in the north, and the French parties dominate the Walloon and Brussels regions in the south and centre. At the same time, the Flemish and Walloon territories are not homogenous, and the fact that some French-speakers inhabit Flanders has been a political sticking point between groups.

### *Bosnia*

Bosnia's political spectrum is similarly fractured between its three primary ethnic actors: Muslims, or Bosniacs, and Serbs and Croats. Nationalist parties for each group have taken strong leads in elections since the country's first post-war elections in 1996. The Serb parties draw votes almost exclusively from the Republika Srpska (RS) to Bosnia's north and east, while Croat and Bosniac parties are almost exclusively limited to the Croat-Bosniac Federation, in the southwest and centre of the country. Before the war began in 1992, the population census listed Bosniacs as comprising 44 per cent of the population, with Serbs making up approximately 31 per cent and Croats approximately 17 per cent.<sup>12</sup> These statistics can only present a general picture, however, as changes during the war have probably altered these numbers even at the level of the aggregate state.

Before the war, the three populations and the other minorities were vastly mixed across the territory of Bosnia. This mixing was severely shifted by the war, which displaced more than half of the population, and which forced a large proportion of these individuals to leave the country altogether.<sup>13</sup> However, in spite of the demographic changes after the war, it would be a mistake to consider these entities truly homogenous, particularly as some refugees are beginning to return to their old homes.<sup>14</sup> From a territorial perspective, the RS

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<sup>11</sup> Kris Deschouwer, "Falling apart Together: The Changing Nature of Belgian Consociationalism, 1961-2001" *Acta Politica* 37, no. 1-2 (Spring-Summer 2002), p. 73.

<sup>12</sup> Results from 1991. Bosnia and Herzegovina, Federal Office of Statistics, "Population Grouped According to Ethnicity, by Censuses 1961-1991", available at [www.Fzs.ba/Eng/population.htm](http://www.Fzs.ba/Eng/population.htm). An additional 6 per cent of the survey respondents declared themselves to be 'Yugoslavs'.

<sup>13</sup> Bose, *Bosnia after Dayton*, p. 33. The population of Bosnia was 4.4 million, with 2.3 displaced and 1.3 refugees leaving the country.

<sup>14</sup> Florian Bieber, "Ethnic Structure, Inequality, and Governance of the Public Sector: Bosnia-Herzegovina", manuscript, 2003, p. 24, notes OSCE figures to this effect.

appears the least ethnically mixed, while more ethnic mixing appears in the Croat-Bosniac Federation.<sup>15</sup>

If the overall demographics of Bosnia somewhat resemble their pre-war figures, as population estimates in 1995 and 1998 suggest,<sup>16</sup> the Bosniacs would appear to be the plurality group. But the three groups also maintain differing views toward the state structure – Bosniacs tend to support a unified state, while Serbs and Croats tend to oppose more unified structures. In light of the available statistical picture, these stances imply that views on the state's future are divided between two groups that are proportionally similar. In spite of some minor variations within each group, these general trends remain strong. The section below outlines in more detail this importance of group positions regarding state structure.

## *B. Different Views of the State: Unitary vs. Decentralized Structures*

### *Belgium*

In Belgium, the Fleming and Francophone populations are quite divided over the degree to which the state should be centralized. Since the 1963 decision to recognize Dutch as one of the country's constituent languages, the Flemish movement has continued to push for a deepening of linguistic rights and increased autonomy for Flanders. This dynamic has resulted in five major reforms and constitutional revisions regarding state structure since 1970, which have taken additional steps toward more decentralization of the Belgian state and increased autonomy for the various linguistic regions.<sup>17</sup> Each of these step-by-step reforms has required extensive negotiations with the Francophones, who would prefer a more unitary state structure. In contrast, the Flemish parties want to “keep reforms moving” toward

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<sup>15</sup> Part of this difference is due to the fact of Croat-Bosniac mixing at the local level in the Federation; see the map in Bose, *Bosnia after Dayton*, p. 4.

<sup>16</sup> Bieber, “Ethnic Structure, Inequality, and Governance”, pp. 22-23.

<sup>17</sup> The 1970 reform outlined region and community structures for the two groups, which were put into place by 1980. Due to a contentious debate over how to treat Brussels, its status as a region was not codified until 1988. After the 1988 reforms, the state began to formally institutionalize some traits of federalism. Its federal status was more clearly secured by the 1993 revisions, which established direct elections for the state sub-units. The 2001 changes transferred further powers from the centre to these entities: Hooghe, p. 55, and Rolf Falter, “Belgium's Peculiar Way to Federalism”, in Kas Deprez and Louis Vos (eds), *Nationalism in Belgium* (New York: St. Martin's Press, 1998), Michael O'Neill, “Re-imagining Belgium: New Federalism and the Political Management of Cultural Diversity”, *Parliamentary Affairs* 51, no. 2 (April 1998), p. 252, Francis Delpéré, “Les principes de la révision constitutionnelle de 1993” in André Leton (ed.), *La Belgique: un État Fédéral en Évolution* (Brussels: Bruylant, 2001), pp. 37-49, Agence France Presse, “Adoption en Belgique d'une réforme constitutionnelle en faveur des régions”, 29 June 2001, and Jean-Pierre Stroobants, “La réforme de l'État de juin 2001: les détours de Polycarpe”, in André Leton, ed., *La Belgique: un État Fédéral en Évolution* (Brussels: Bruylant, 2001), pp. 51-59.

decentralization.<sup>18</sup> Along with their desire to decentralize, Flemish politicians are anxious to minimize the territorial growth of Francophone-majority Brussels, which in their view spreads into Dutch-speaking Flanders like an “oil stain”. This stance reflects the somewhat negative Flemish attitude toward the capital in general<sup>19</sup> – though the fact that some Dutch speakers remain in Brussels may be one point that prevents the Flemings from abandoning the Belgian idea altogether.<sup>20</sup> For their part, Francophones chafe at the negotiated ‘iron ring’ around the Brussels districts that restricts the city’s growth.

### *Bosnia*

As mentioned above, Bosnia’s different groups also portray vastly different views regarding whether the state should be more unitary or more decentralized. Surveys indicate that more than 95 per cent of Bosniacs (Muslims) support a unitary Bosnian state, while only 40 per cent of Croats and 20 to 25 per cent of Serbs support a unitary state. It must be noted that such figures are not permanent, as within the last few years, Croatian support has been declining and Serb support has slowly begun to increase.<sup>21</sup>

## **III. Institutional Possibilities**

A number of theorists have given extensive consideration to the means by which ethnic disagreement may be addressed within a democratic state. First, different forms of electoral systems can both minimize and augment conflict. While both Belgium and Bosnia maintain PR systems, it is worth noting electoral alternatives in this vein. Second, various structures that aim to increase group autonomy may present a means to appease both groups – provided that they can be achieved in a way that does not endanger the existence of the state itself.

### *A. Electoral Systems: Insufficient Alternatives for Divided House States*

Democracy’s inherent trade-off between governability and representativeness<sup>22</sup> may be regulated through electoral systems. Electoral design can either minimize or maximize ethnic

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<sup>18</sup> Kris Deschouwer and Theo Maarten Jans, “L’avenir des institutions, vu de Flandre,” in André Leton (ed.), *La Belgique: un État Fédéral en Évolution* (Brussels: Bruylant, 2001), p. 220.

<sup>19</sup> “One doesn’t fall in love with an oil stain”, Deschouwer and Jans, p. 225.

<sup>20</sup> Yves Cornu, “Belgique: la fracture” *Le Point*, 13 May 1995, p. 43.

<sup>21</sup> Miroslav Prce, “Revising Dayton Using European Solutions”, *The Fletcher Forum of World Affairs* 25, no. 1, Winter 2001, p. 14.

<sup>22</sup> Larry Diamond, “Three Paradoxes of Democracy” in Larry Diamond and Marc Plattner (eds), *The Global Resurgence of Democracy* (Baltimore: The Johns Hopkins University Press, 1993).



cleavage lines in mixed states, depending on whether a more efficient government or a more representative government is the goal. A long-standing debate has raged among political scientists regarding the better alternative for ethnically divided societies. In *majoritarian* electoral systems, candidates compete against each other in single-member districts in ‘winner-take-all’<sup>23</sup> races. Such systems have the disadvantage that smaller ethnic groups may become permanent minorities and therefore permanent losers in particular districts or in the state as a whole, which may make them disgruntled with the system.<sup>24</sup> Even in divided house states with less clear majorities and minorities, a majoritarian system could be destabilizing, as 51-49 per cent races produce a large number of ‘wasted’ votes. The United States and the United Kingdom’s Westminster system are classic examples of majoritarian electoral systems.

Belgium initiated elections through *proportional representation* (PR) in 1899, the first state to do so.<sup>25</sup> In PR systems, voters cast votes in ‘multi-member districts’, often for parties or party lists.<sup>26</sup> PR is thus intended to produce election results that more closely mirror primary cleavages in society by proportion. Within such systems, ethnic cleavages may become formalized through ethnic political parties. Given PR’s ability to increase representation and voice for minorities, a number of mixed states endorse PR as a means to encourage the broad enfranchisement of diverse groups in governing structures, in contrast to majoritarianism’s tendency to exclude smaller groups.<sup>27</sup>

Some theorists, however, argue that instead of formalizing cleavages, electoral systems should provide incentives for politicians to seek votes across ethnic boundaries, either through a majoritarian system or through an *alternative vote* system, (also called preference voting). An alternative vote system, like that used in Australia, is founded on the basis of single-member districts. However, in contrast to the simple majoritarian system, it encourages voters to rank candidates in the voting process, allowing them to express a preference for more than one candidate. Individuals may therefore cast votes for candidates from more than one ethnic group. In this way, the system can therefore avoid some of the

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<sup>23</sup> This is also known as a ‘first past the post’ system. Giovanni Sartori, *Comparative Constitutional Engineering* (New York: New York University Press, 1994), p. 4.

<sup>24</sup> Admittedly, this effect may be reduced at the local level for concentrated groups.

<sup>25</sup> Giovanni Sartori, *Comparative Constitutional Engineering* (New York: New York University Press, 1994), p. 46.

<sup>26</sup> Ibid, pp. 8-9.

<sup>27</sup> Arend Lijphart, “Constitutional Choices for New Democracies”, in Larry Diamond and Marc Plattner (eds), *The Global Resurgence of Democracy* (Baltimore: Johns Hopkins University Press, 1993).

centrifugal effects of PR, fostering instead a centripetal system intended to encourage group cooperation through electoral incentives.<sup>28</sup>

For severely divided societies, however, cross-ethnic voting remains an unlikely possibility. Even in Belgium, which has not experienced group violence, political elites attempting cross-ethnic appeals during the 1999 elections there were largely unsuccessful.<sup>29</sup> In Bosnia, a system of alternative voting was applied in the November 2000 election for the Republika Srpska's presidential and vice-presidential offices. The intent of this change was to improve chances for electing moderate candidates by allowing voters to rank their preferences, rather than simply casting one vote per office. However, this system could not erase the strong preferences for the nationalist candidates, who managed to win the most votes.<sup>30</sup> In theory, the alternative vote system can allow individuals to include the (moderate) parties of other ethnic groups in their vote rankings, which is why some argue that it can produce centripetal effects on electoral systems.<sup>31</sup> As demonstrated by the election 2000 experiment in the RS, it is likely that attempts to institute cross-ethnic voting across Bosnia by using the alternative voting system are likely to result in similar disappointing results, given the very real persistence of societal cleavages along ethnic lines.<sup>32</sup>

In addition, while some North American and British institutions have advocated majoritarian voting systems for Bosnia, a move to such voting could simply alienate some groups and weaken their support for democratic institutions.<sup>33</sup> It should also be noted that while the choice of electoral systems is important, the centralization debate in divided states cannot be easily resolved through electoral institutions – in fact, electoral structures themselves often figure as part of institutional debates.

### *B. Devolution or Autonomy for Sub-State Units*

Decentralized states are those in which power is devolved from the centre to federal or autonomous sub-state units, in contrast to unitary, or centralized states. The devolution of

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<sup>28</sup> Benjamin Reilly, *Democracy in Divided Societies* (New York: Cambridge University Press, 2001), introduction.

<sup>29</sup> Kris Deschouwer, "Belgium's Quasi-Regional Elections of June 1999," *Regional and Federal Studies* 10, no. 1 (Spring 2000), p. 130.

<sup>30</sup> International Crisis Group, "Bosnia's November Elections: Dayton Stumbles," December 18, 2000, available at <http://www.crisisweb.org/home/index.cfm?id=1569&l=1>, and Bose, pp. 220-21 and 230-39.

<sup>31</sup> Reilly, *Democracy in Divided Societies*, is a strong advocate of this system.

<sup>32</sup> Bose makes a similar point; *Bosnia after Dayton*, pp. 234-39.

<sup>33</sup> Bose, 93; Prce, 6.

powers has long been touted as one means to reduce pressure on the central government with regard to ethnic demands, as it can “take the heat off a single focal point”.<sup>34</sup>

Federalism for decentralized states may tend toward *symmetry*, in which units exhibit similar powers and an equal relationship to the centre, or toward *asymmetry*, in which units may possess dissimilar structures or powers. Asymmetric structures that embody self-governance structures for particular ethnic, national, or religious groups codify a degree of autonomy for those groups.<sup>35</sup> While federalism is a broad term that can incorporate a range of decentralized structures, autonomous structures are often constructed to give specific powers to minority groups and to address particular group concerns. Autonomous units can therefore be a useful means to provide a degree of self-government to a group or region without conceding state independence or sovereignty.<sup>36</sup> Autonomous units are often favoured as a compromise solution when groups take differing positions on the continued existence of a state and the permanence of its borders.

Autonomous units may take territorial or non-territorial forms. Native American reservations in the United States and autonomous regions in Russia are some examples of territorial units. But such territorial governance structures may prove controversial, given the fact that the population demographics of units are rarely homogenous. It is in these cases that *non-territorial autonomy* may be particularly useful. Sometimes called ‘personal’ or ‘cultural’ autonomy, this form involves group self-administration over the cultural, linguistic, ethnic, or religious matters of a minority group.<sup>37</sup> The personal principle behind non-territorial autonomy allows for the formation of autonomous units that are de-linked from territorial considerations – similar to *millet*s under the Ottoman Empire, in which non-Muslim groups retained control over their own religions, educational, linguistic, and cultural institutions.<sup>38</sup>

While the notion of de-linking administration from territory is an unusual concept for many theorists, a number of examples of non-territorial autonomy exist in practice. The

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<sup>34</sup> Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), p. 598.

<sup>35</sup> Yash Ghai, “Ethnicity and Autonomy: A Framework for Analysis” in Ghai (ed.), *Autonomy and Ethnicity* (New York: Cambridge University Press, 2000), pp. 8-9.

<sup>36</sup> Hans-Joachim Heintze, “On the Legal Understanding of Autonomy” in Markku Suksi (ed.), *Autonomy: Applications and Implications* (Cambridge: Kluwer Law International, 1998), p. 7.

<sup>37</sup> Ruth Lapidot, *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington, D.C.: US Institute of Peace Press, 1996), pp. 5 and 37; Asbjorn Eide with Vibeke Greni and Maria Lundberg, “Cultural Autonomy: Concept, Content, History and Role in the World Order” in Suksi, pp. 251-76.

<sup>38</sup> Eide et al., p. 261, Uri Ra’anan, “The Nation-State Fallacy” in Joseph Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies* (New York: Lexington Books/Macmillan, 1991), pp. 12-15. In his view, Western thought has primarily emphasized the territorial concept of nationality, while Eastern and Southern Europe has tended to emphasize nationality as a “cultural, religious, and historic entity”, characteristics that may be separated from territory.

Hungarian state established non-territorial ‘minority self-governments’ for minority ethnic groups within its borders in 1993. These loose bodies consist of representatives chosen by their ethnic constituents in non-territorial elections.<sup>39</sup> In Belgium, linguistic, educational, and cultural matters are administered through the French and Dutch communities, administrative units that are founded on a personal, rather than a geographic, principle. The three regions (Flanders, Wallonia, and Brussels) are territorially autonomous administrative units that exist concurrently with the non-territorial communities.

In divided house states, groups favouring a unitary state will generally tend to oppose the devolution of governmental powers to sub-state units. Indeed, the Francophone population has been less enthusiastic about the step-by-step devolution of powers from the Belgian centre to the units. However, the structure of Belgium has incorporated a number of innovations that maximize the benefits of devolution for the Francophone population as well. Belgium’s use of both territorial and non-territorial units in its administrative structure produces a flexible array of institutions that allows for compromise between groups. Moreover, these units maintain various competencies over different issue-areas, a mechanism intended to reduce the probability for conflict.

#### **IV. Using Autonomy to Maximize Flexibility in Belgium**

The tension between the Francophone vision of a more centralized state and the Flemish vision of a further decentralized state form the centre of Belgian politics. The paradox of Belgian government lies in the need to recognize the fundamental demands of each group while at the same time preserving some central state powers. The intricate, step-by-step negotiations and agreements over federal structures between 1970 and 2001 illustrate the complexity of this process. While some analysts take the pessimistic view that further devolution will produce the disintegration of the state, it appears instead that the pain-staking concessions in each of these agreements gives testament to the durability of the Francophone-Flemish compromise.

In Belgium, the central government’s minimal powers are more or less limited to the areas of budgeting, defence, and foreign policy, with some allowances to the units for foreign policy. Most of the daily workings of politics are instead carried out by the constituent units.

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<sup>39</sup> Stephen Deets, “Reconsidering East European Minority Policy: Liberal Theory and European Norms”, *East European Politics and Societies* 16, no. 1, 2002, pp. 30-53, and Deets and Stroschein, “Minority Autonomy in Liberal Democracies: Rights, Justice, and Hungarians in Central Europe”, manuscript, 2003. The notion of cultural autonomy has been present in Hungarian thought since the mid-1850s – Eide, pp. 264-66.

Belgium has three *regions*, designated on a territorial basis: Flanders, Wallonia, and Brussels capital. The regions primarily make decisions regarding affairs within their territory, such as on transportation and economic policy. Another set of units are the three linguistic *communities*: the Francophones, the Flemings and the Germans. These non-territorial units control educational and linguistic matters.

The combination of these units produces a complex configuration, as outlined in Figure 1 at the end of this paper. Both the Flemish and the Francophone communities have jurisdiction over educational and linguistic matters within the Brussels region, making the non-territorial aspect of their operation indispensable.<sup>40</sup> The structure is highly asymmetrical, as the Germans have only a community and Brussels has only a region. In addition, the Flemings have fused their community and region administrations to produce a more unified Flemish structure. The Francophone community, however, remains separate both from the Wallonia region and from the Brussels capital region.<sup>41</sup>

#### *A. Mixing Territorial and Non-Territorial Autonomous Units*

The Belgian structure of regions and communities was envisioned in agreements as early as 1970, but their emergence proceeded only in steps.<sup>42</sup> The Brussels region emerged in 1988, and observers began to classify Belgium as a formally federal state in 1993, as that year's reform included direct elections for the Flemish and Walloon regions. The territorial regions of Wallonia, Flanders, and Brussels capital maintain councils to produce decisions on matters relating to these territories, particularly in the realm of economics.<sup>43</sup> The Brussels capital region includes quotas to guarantee the Flemish minority a certain number of seats on the regional council, a quota that was increased with the 2001 reforms.<sup>44</sup>

The non-territorial communities for the Flemings, Francophones, and Germans also maintain councils to formulate educational, linguistic, and cultural policy, as outlined in

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<sup>40</sup> Some powers were also extended to Francophones in the Flemish region in 2001: *Agence France Presse*, 29 June 2001.

<sup>41</sup> Jacques Brassine de las Bussière, "Le niveau de pouvoir fédéral," in André Leton, (ed.), *La Belgique: un État Fédéral en Évolution* (Brussels: Bruylant, 2001), p. 71, and Rolf Falter, "Belgium's Peculiar Way to Federalism", p. 194.

<sup>42</sup> By 1980, the non-territorial cultural communities gained tangible powers and the territorial regions of Flanders and Wallonia were set into operation. It was at this early point that Flanders merged its regional and community units into one structure cf. Falter, pp. 183-84; Hooghe, pp. 56-57.

<sup>43</sup> Since the 1993 reforms and the 1995 elections, the members of these regional councils have been elected directly – with a few exceptions. Only the Walloon region has straightforward elections. As the Flemish regional body is combined with the community body, six of its members are appointed from the Brussels capital region: Brassine de la Bussière, p. 76.

<sup>44</sup> *Agence France Presse*, June 29, 2001.

Figure 1.<sup>45</sup> The Flemish combined region/community body is the same for both the territorial and non-territorial units, though it also maintains some linguistic jurisdiction in Brussels. The Francophone council is comprised of members of the Walloon and Brussels regional councils, and the Germans elect their community council directly.<sup>46</sup> Because the Francophone and Flemish communities are founded on a personal, rather than a geographic, principle, they can therefore administer linguistic and educational matters for their respective populations within the Brussels region without dividing up its territory. Instead, community jurisdiction is determined on the basis of a personal principle, by the language chosen for a child's education or cultural activities.<sup>47</sup>

*Non-territorial administration of language: Brussels and beyond*

The design of both territorial and non-territorial sub-state units originally emerged as a compromise to address the touchy problem of Brussels, which contains both linguistic groups.<sup>48</sup> The reach of the two communities outside of their respective territory of Flanders or Wallonia was initially limited to the Brussels region. However, a further reform agreement in 2001 incorporated some extended powers of the Francophone community into the Flanders region, to address linguistic concerns of French-speakers there. In exchange, the Flemings in Brussels were allocated increased representation in the Brussels capital council.<sup>49</sup>

The non-territorial autonomy of the communities has provided a useful means to mitigate Flemish concerns over the plight of minority Dutch-speakers in the Brussels region, and, since 2001, to mitigate French concerns over the status of Francophones in Flanders. The Flemish desire for a more decentralized state would be more strongly opposed by Francophones if it were not for this mechanism. The ability of these communities to coordinate linguistic and cultural institutions outside of 'their' geographic regions preserves a degree of state unity in spite of the devolution of powers from the centre. Ironically, the delegation of further powers to the separate communities thus becomes a means to preserve the continuity of the Belgian state.

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<sup>45</sup> These bodies are chosen differently as well, reflecting Belgium's asymmetric structure and different forms of autonomy for the units.

<sup>46</sup> Brassine de la Bussière, p. 76.

<sup>47</sup> Falter, p. 182, O'Neill, p. 253.

<sup>48</sup> Deschouwer and Jans, p. 209.

<sup>49</sup> *Agence France Presse*, 29 June 2001. As an additional concession to the Francophones, Belgium signed the Council of Europe's Convention for the Protection of Minorities for the first time, acknowledging concerns over Francophones living in Flanders.

## *B. Granting Exclusive Competencies to Various Units*

One of the most interesting aspects of the Belgian structure is the large amount of latitude allocated to the region and community units. In fact, since 1980 there has been little formal hierarchy of the centre over these units in areas such as education and economic policy. This situation is due to the fact that each level of power holds its own competencies to a degree far beyond that of other states, and some of these powers can even extend into the international arena.<sup>50</sup> While federations such as the US maintain a principle of supremacy at the central level of government, Belgium instead applies a rule of exclusive competencies to determine which body should govern each area.<sup>51</sup> This principle of exclusive competencies creates a governmental structure that assigns policy issues that might be ethnically contentious to appropriate governing bodies,<sup>52</sup> therefore allowing the Flemings to make decisions on Flemish education, and so on.

These exclusive competencies are divided in the following manner. The central government primarily maintains powers over defence, finances, legal matters, social security, and much (though not all) of foreign policy.<sup>53</sup> The three territorial regions of Flanders, Wallonia, and Brussels capital hold powers over economic issues and development related to their territories, including environmental and agricultural policy, research, and external commerce.<sup>54</sup> The primary powers for the three non-territorial communities (Flemings, Francophones and Germans) include educational policy and linguistic and cultural matters. In addition, communities may engage in some foreign relations directly.<sup>55</sup> In distributing competencies between different units, the Belgian structure minimizes the likelihood of persistent conflict and controversy.

One particularly unusual feature of this structure is that treaties may shift jurisdictions. Once treaties with other countries have been approved on issues relating to a unit's particular

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<sup>50</sup> Falter, p. 185, and André Lecours, "Solving the Belgian Paradox: Political-Institutional Fragmentation, National Identity and Nationalist/Regionalist Politics", *Canadian Review of Studies in Nationalism* 29 (2002), p. 140.

<sup>51</sup> Philippe Lauvaux, "Tendances récentes du fédéralisme en Europe: La remise en cause de la primauté du droit fédéral," in André Leton, ed., *La Belgique: un État Fédéral en Évolution* (Brussels: Bruylant, 2001), pp. 301-4.

<sup>52</sup> Phillippe Van Parijs, "Power-Sharing versus Border-Crossing" in Ian Shapiro and Stephen Macedo (eds.), *Designing Democratic Institutions* (New York: New York University Press, 2000), p. 306.

<sup>53</sup> *Agence France Presse*, 29 June 2001, O'Neill, p. 255, Deschouwer and Jans, p. 221, and Brassine de la Bussière, p. 97.

<sup>54</sup> *Agence France Presse*, June 29, 2001, Stroobants, p. 53, O'Neill, p. 254.

<sup>55</sup> O'Neill, p. 255.

competencies, jurisdiction over their content reverts to the appropriate governing units.<sup>56</sup> External matters also often require the approval of the unit that has jurisdiction within a particular category; a treaty on education, for example, requires the approval of all three communities. In addition, ‘special laws’ regarding relations between nationalities require the approval of more than one community council.<sup>57</sup>

### *C. Assessing the Belgian Model*

The Belgian model of 1) a mixture of territorial and non-territorial sub-state units and 2) the assignment of exclusive competencies to these units is extremely complex and can be initially confusing. The Belgian system attempts to ensure the representation of both groups, while at the same time attempting to avoid the deadlock that is possible in divided house states. While it opens up the possibility for governability with representativeness, the cost is a sizeable loss in state efficiency at translating group articulations into policy.

In addition, even with complex mitigating institutions, some degree of controversy is inevitable in any divided house state. Although exclusive competencies are quite useful in such states, strong debates may arise over how to distribute such competencies in the first place. The Flemings, for example, would prefer that the social security system be decentralized to the regions rather than remaining with the central government, as they feel that they are subsidising the more disadvantaged Walloon region.<sup>58</sup> At the same time, when unavoidable and fundamentally controversial questions then do arise, they can then be better isolated for specific negotiations between the groups.<sup>59</sup> Given a system in which groups maintain deep disagreements, the structure of exclusive competencies avoids a situation of ‘all conflict, all the time’ and instead channels debates such that only essential issues come into the realm of debate. This effect of minimizing tension preserves state viability over the long term.

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<sup>56</sup> Johanne Poirier, “Formal Mechanisms of Intergovernmental Relations in Belgium”, *Regional and Federal Studies* 12, no. 3 (Autumn 2002), p. 40.

<sup>57</sup> Falter, pp. 183 and 190.

<sup>58</sup> Deschouwer and Jans, p. 221.

<sup>59</sup> Van Parijs presents a useful means to visualize how this mechanism might be particularly useful in avoiding ‘hot spots’ and steering toward calmer waters in a divided polity.



## V. Applying the Belgian Model to Bosnia

Like Belgium, Bosnia exhibits a kind of asymmetric federalism<sup>60</sup> that is best understood in terms of a collection of autonomous units. The state structure created by the 1995 Dayton Peace Agreement that ended the war established the two territorial entities of the Republika Srpska (RS) and the Bosniac-Croat Federation. The RS covers 49 per cent of the country's territory, and the Bosniac-Croat Federation 51 per cent. The particularly strategic territory of Brčko, which provides a corridor for each republic, held an ambiguous status for years before being officially designated as its own district in 1999. As previously noted, these territories are far less diverse than they were before the war, but are hardly homogenous.

The central governing structures consist of a small bicameral parliament, with one third of the seats reserved for the RS and two-thirds for the Bosniac-Croat Federation.<sup>61</sup> This quota structure for the parliamentary bodies is only one example of the numerous consociational checks inherent in the Bosnian government. In addition, a veto structure similar to that in the Belgian parliament ensures that one group may not push through legislation that is strongly opposed by another group.<sup>62</sup> Another consociational example appears in the central executive office as the presidency is collectively held by three members, one from each group. Each member of the presidency serves as chair for eight months, going through two rounds in charge during the four-year collective term. Because each group's presidential candidate is selected from within their respective territorial entities, individuals residing in the 'wrong' entity fall outside of this voting process, as do individuals that identify as mixed 'Yugoslavs' or ethnic 'Others'.<sup>63</sup>

The sub-state territorial entities also have their own internal executive and legislative structures. Like those in Belgium, these units are structured asymmetrically. The Bosniac-Croat Federation entity is highly decentralized, a symmetric sub-state federation in its own right, with some decisions allocated to the cantonal level. As noted by Sumantra Bose, such decentralization was necessary in order to facilitate Croat participation in the entity and in the

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<sup>60</sup> More precisely, an 'asymmetric multinational federation' cf. Florian Bieber, "Governing Post-War Bosnia-Herzegovina" in Kinga Gál (ed.), *Minority Governance in Europe* (Budapest: LGI/ECMI Series on Ethnopolitics and Minority Issues, 2002), p. 323.

<sup>61</sup> Gordon Bardos, "Bosnia" in Adrian Karatnycky, Alexander Motyl and Aili Piano (eds) *Nations in Transit 1999-2000* (New York: Freedom House, 2001).

<sup>62</sup> Bose, p. 63.

<sup>63</sup> Bieber, "Governing Post-War Bosnia-Herzegovina", p. 324, and Roberto Belloni, "Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina" forthcoming in *International Peacekeeping*, Vol. 11, no. 3, 2004.

Dayton Agreement.<sup>64</sup> For this region, the legislative branch of the Bosniac-Croat entity includes its own consociational structures, and the upper house sets aside quotas of seats for Bosniac and Croat delegates, as well as for Serbs and ‘Others’.<sup>65</sup> In addition, the president and vice-presidents of the Federation must represent each constituent group; provisions to represent Serbs as well were added in 2002.<sup>66</sup> The more homogenous RS is a much more centralized entity, with a unicameral parliament and weak regions instead of cantons.<sup>67</sup> As with the Federation, additional representation for non-Serb constituent peoples was added into the RS constitution after 2002.<sup>68</sup> The Bosnian federal units are outlined in more detail in Figure 2.

Critics of the Dayton structure have argued that the consociational nature of these institutions codifies ethnic divisions and hinders cross-ethnic political action. They particularly bemoan the continuing success of nationalist parties in elections, blaming the institutional structures for the success of such parties. Among the consociational difficulties, the original Dayton structures lacked feasible representation for individuals in the ‘wrong’ entity, a situation that was improved after a 2000 Constitutional Court decision that Bosniacs, Croats and Serbs should have similar status and rights across the two entities.<sup>69</sup> The representation of mixed individuals and for ethnic ‘Others’ is now improved, but remains problematic because it attempts to combine personal voting rights with a territorial solution. The Belgian approach of allowing for non-territorial units could provide a more plausible solution to the representation problem.

In spite of proposals for more integrationist institutions, the removal of consociational institutions would be unlikely to eliminate the persistence of nationalist elites and ethnic parties. Given the violent and persistent nature of the 1992-95 war, it is simply unrealistic to expect the citizens of Bosnia to quickly lose their ethnic affiliations in the political arena.

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<sup>64</sup> Bose, p. 77.

<sup>65</sup> Following the ‘Constituent Peoples’ decision of the Constitutional Court, structures were revised in 2002 to outline increased guarantees for Serb representation in the Federation. “Constitution of the Federation of Bosnia and Herzegovina” available at <http://www.ohr.int/ohr-dept/legal/const/>. I am grateful to Florian Bieber for pointing out these changes.

<sup>66</sup> Bose, pp. 81-83, and “Constitution of the Federation of Bosnia and Herzegovina” available at <http://www.ohr.int/ohr-dept/legal/const/>.

<sup>67</sup> Bose, p. 73.

<sup>68</sup> “Constitution of Republika Srpska” available at <http://www.ohr.int/ohr-dept/legal/const/>.

<sup>69</sup> Quotas here and there try to rectify this problem, but this representation is certainly less than for the three ‘constituent peoples’. OSCE “Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia and Herzegovina” 2002, available at [http://www.oscebih.org/essentials/pdf/constituent\\_peoples\\_court\\_decision\\_eng.pdf](http://www.oscebih.org/essentials/pdf/constituent_peoples_court_decision_eng.pdf), and Minority Rights Group, “Decision of the Constitutional Court on the Constituent Status of Peoples, Implementation and the Rule of Law” 2003, available at [http://www.minorityrights.org/WorkshopReports/work\\_rep\\_chapterdetail.asp?ParentID=15&ID=97](http://www.minorityrights.org/WorkshopReports/work_rep_chapterdetail.asp?ParentID=15&ID=97).

Rather, Bosnian institutions should reflect these cleavages if the institutions are to be treated as legitimate by the population.<sup>70</sup> It is a paradox of Bosnian governing structures that less centralization can in fact produce more state stability. Incorporating some innovations from the Belgian model could provide a means to include and appease different groups that would not endanger the existence of the state itself.

#### *A. Is Bosnia Like Belgium?*

How useful is it to compare two states with the different backgrounds of Belgium and Bosnia? One might indeed wonder whether a state that is emerging from a violent war at the same time that it is establishing its first democratic institutions is simply too different from the seeming stability of Belgium. Certainly, Belgian institutions were built ‘from the ground up’ over time, while the Bosnian structures have been recently imposed from outside by the heavy hand of the international community. However, the survival of the Bosnian state requires that its internal institutions can be modified if necessary, an example exemplified by the Constitutional Court decision on the Constituent Peoples in 2000. Florian Bieber has described this imperative as a “process-oriented understanding of power sharing”.<sup>71</sup> Even Belgium is not a static entity, but rather a state in its own form of transition – as it has engaged in the process of step-by-step devolution over the past 15 to 20 years.

The persistent international presence in Bosnia, in the form of the Office of the High Representative (OHR), is one marked difference between the two states. While the OHR may be partly responsible for keeping Bosnia together, the Belgian example also proves that states with weak central structures are not automatically doomed to disappear. Given that a highly unified state structure cannot be imposed on post-conflict Bosnia, and given that the OHR role is a temporary one, the Belgian example remains highly relevant for Bosnia. The different experiences of these two and small countries in Europe cannot deny the similar logic behind institutions for divided states.<sup>72</sup>

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<sup>70</sup> Prce, pp. 6-7, Bose, p. 93.

<sup>71</sup> Bieber, “Power Sharing as Ethnic Representation in Postconflict Societies: The Cases of Bosnia, Macedonia, and Kosovo”, p. 241.

<sup>72</sup> Bieber lays out a convincing justification for such a comparison: “Consociationalism – Prerequisite or Hurdle for Democratisation in Bosnia? The Case of Belgium as a Possible Example”, *Southeast Europe Review for Labour and Social Affairs* 2, no. 3 (October 1999).

## *B. Constructing Non-Territorial Autonomous Units*

One of the problems with the initial Dayton framework involves its inconsistency on the issue of minority returns, or the return of refugees to areas where they would be part of the minority. While the Dayton agreement emphasized the importance of refugee returns, its territorial foundations for governance has effectively minimized political representation for potential minority returnees. As noted above, this problem was alleviated to some degree by the 2000 court decision and increases in representation for the three primary groups across Bosnia, codified in 2002.<sup>73</sup> However, the new constitutional provisions must work around territorial considerations – the Federation Constitution, for example, outlines that the House of Peoples must contain at least one representative from a particular group from each canton where there is one representative of that group in the canton legislature.<sup>74</sup> While well intentioned, the provision relies heavily on the notion that cantonal representation will adequately reflect its demographic composition; there are several reasons why this may not be the case. Furthermore, even if there are only 100 Serbs in that canton, possibly too few to produce a cantonal representative, should they have no voice at the Federation level? A non-territorial unit to represent these Serbs, along the lines of the Belgian communities, might prove a more useful way around this problem.<sup>75</sup>

Minority returnees alone constitute a sizeable potential group of such individuals – UNHCR statistics list current minority returns at around 430,000, approximately 12/13 per cent of the entire Bosnian population.<sup>76</sup> In addition to returnees, some of the B-C-S minority individuals in these areas had simply stayed put throughout the war. In addition, the 2002 representation changes only partially alleviated the situation for Yugoslavs and ethnic ‘Others’ such as the Roma, approximately 8 per cent of the total population, as the groups must compete or bargain over the seats allocated for ‘Others’ generally.<sup>77</sup>

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<sup>73</sup> Bieber, “Ethnic Structure, Inequality and Governance of the Public Sector: Bosnia-Herzegovina”, manuscript, 2003.

<sup>74</sup> “Constitution of the Federation of Bosnia and Herzegovina”, available at <http://www.ohr.int/ohr-dept/legal/const/>, III, Section 2, Article 8(3).

<sup>75</sup> Moreover, there has been some resistance to implementing some of these changes cf. International Crisis Group, “Bosnia’s Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building” (Sarajevo/Brussels: Balkans Report no. 146, July 2003), pp. 3-4. Available at <http://www.crisisweb.org/home/index.cfm?id=1474&l=1>.

<sup>76</sup> Population counted as 3.4 million. For more precise figures, see Figure 2. UNHCR statistics are available at [http://www.unhcr.ba/return/Tot\\_Minority%20\\_GFAP\\_November\\_2003.pdf](http://www.unhcr.ba/return/Tot_Minority%20_GFAP_November_2003.pdf) Population statistics from Bieber, “Bosnia and Herzegovina”, *Nations in Transit*, 2002 (New York: Freedom House, 2002).

<sup>77</sup> From Bieber, “Bosnia and Herzegovina”, *Nations in Transit*, 2002 (New York: Freedom House, 2002).

Non-territorial structures similar to those in Belgium could provide a more comprehensive and consistent means of addressing this deficit in representation.<sup>78</sup> The current attempt to increase representation for disenfranchised groups through the addition of quota seats in governing bodies gives a small voice but little actual authority to the members of these groups. As the following section will outline, a more viable structure might administer issues of real concern to such groups, rather than simply providing them with small symbolic representation in bodies where they are likely to be overrun by majorities. Through establishing meaningful representation, non-territorial units based on the personal principle could provide more extensive fulfilment of the rights of individuals of various groups across the state, even in regions where they are local minorities.

Moreover, these bodies could provide for the ability for individuals to vote for ‘their’ group’s presidential candidate, even if they live within the ‘wrong’ entity, an issue that currently remains unaddressed. Similar to the joint community administration over the Brussels region, the addition of non-territorial councils could provide a more effective means of integrating the district of Brčko more fully with the entities on a balanced basis. In addition to assisting the constituent groups, non-territorial representative bodies for self-declared ‘Yugoslavs’ and ethnic ‘Others’ could provide a more effective means of representing and articulating their interests. Figure 3 outlines a sketch of these potential structures.

### *C. Exclusive Government Competencies*

Initially after the Dayton agreement, the devolution of government competencies to the entity level was quite extensive in Bosnia, given the recent history of the war.<sup>79</sup> Each entity has maintained its own army for the past several years.<sup>80</sup> While reforms were enacted in 2002 to further integrate the forces,<sup>81</sup> the extent to which integration can take place remains to be seen. The reluctance to integrate on the part of the various constituent peoples is balanced with the imperative of a somewhat unitary defence structure if the country wishes to integrate with Euro-Atlantic structures. The fact that the integration of defence, one of the most fundamental of state functions, remains problematic illustrates the degree of difficulty in the

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<sup>78</sup> Bieber has also noted this possibility, “Governing Post-War Bosnia-Herzegovina”, p. 333.

<sup>79</sup> Robert Hayden, *Blueprints for a House Divided* (Ann Arbor: The University of Michigan Press, 1999), p. 126.

<sup>80</sup> Bose, p. 78. At the same time, the entities were not allowed to deploy forces unilaterally; article V, section 5.

<sup>81</sup> OSCE, Defence Reform Commission, “The Path to Partnership for Peace: Report of the Defence Reform Commission”, Sarajevo, 25 September 2003. Available at [http://www.oscebih.org/security\\_cooperation/?d=4](http://www.oscebih.org/security_cooperation/?d=4).

general integration of state competencies. The entities are also allowed to maintain their own relationships with other states, although formal agreements and treaties must be approved by the central government.<sup>82</sup>

Even with attempts at reforms, the Bosnian constitution leaves the powers of the central government remarkably vague. Some supremacy is implied for the central governing structures in the areas that are explicitly assigned to the centre, such as foreign policy, customs policy, central monetary and finance policy, immigration, and the regulation of transport between entities.<sup>83</sup> Areas that are not mentioned in this category are left to the entities, resulting in significant actual powers at this level. Moreover, because the entities are responsible for collecting revenues, they hold more actual power to implement particular policies, and the centre depends on the entities for sizeable funds.<sup>84</sup> While the central government officially enacts foreign policy and official trade policy, the entities may also pursue “special relationships with neighbouring states”,<sup>85</sup> a provision not terribly unlike the international contacts between Belgium’s sub-state units and other states.

The Office of the High Representative’s extensive, yet temporary, control over many of these competencies does not deny the fact that Bosnia’s survival after the exit of the international community requires attention to the optimal distribution of competencies. Representation for the sake of representation is not enough to pacify the divided interests in Bosnia. Rather, we should note that not all issues are created equally in the realm of inter-group debate. For example, up to this point school administration in Bosnia has remained quite separated between groups. Admirable efforts to integrate schools and curricula<sup>86</sup> may achieve some degree of centralization, but will inevitably meet with resistance by some of the less moderate elements within each constituent group as efforts at reforms progress. Less an issue of language, as in Belgium, these debates may be partly religious and partly cultural, regarding which version of history should be taught in classrooms,<sup>87</sup> and producing a backlash against centralization in general.

In order to avoid the derailment of education reform, a system similar to that of Belgium might be established to govern areas of education that cannot be integrated. Allocating the

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<sup>82</sup> Constitution of Bosnia and Herzegovina, Article III, Section 2, available at the Constitutional Court site, <http://www.ccbh.ba/constitution/>.

<sup>83</sup> Constitution, Article III, Section 1.

<sup>84</sup> William Fox and Christine Wallich, “Fiscal Federalism in Bosnia-Herzegovina: The Dayton Challenge”, Washington, D.C.: The World Bank, Central Europe Department, January 1997.

<sup>85</sup> Bosnian Constitution, Article III, section 2.

<sup>86</sup> OSCE, “Education Reform: A Message to the People of Bosnia and Herzegovina”, 21 February 2002. Available at <http://www.oscebih.org/documents/26-eng.pdf>.

<sup>87</sup> This debate is far from being resolved in the United States with regard to minority groups.

control of these schools to non-territorial administrative units for each community could be a way to avoid near-certain deadlock in this area. Non-territorial units, in combination with exclusive competencies, can be useful ways to sidestep intractable governance problems in the future.

## **VI. Conclusion**

A number of observers of post-Dayton Bosnia have begun to advocate various forms of constitutional change for the state. Some have blamed the Dayton structure for creating “too many” levels of governance, and tout a model that would eliminate the Bosniac-Croat Federation altogether, creating a loose and symmetric federation along the Swiss model.<sup>88</sup> However, the complexity of Dayton’s structures arose for a reason – Dayton was not produced by accident, but rather by years of negotiation between warring groups. The complex structure of Belgian governing institutions illustrates that groups that disagree on the nature of governance may indeed require complex, asymmetric governing institutions in order to coexist.

Belgium and Bosnia can be understood as divided house states, which contain proportionally similar groups with opposing views regarding whether the state should be more unitary or more decentralized. Belgium addresses this dilemma in two primary ways: 1) non-territorial autonomous units in the form of the linguistic communities, and 2) exclusive competencies for different autonomous units within the diverse Belgian state. The Belgian example demonstrates that even where groups disagree on state structure, a mixture of various forms of group autonomy may be able to facilitate stability and compromise. The success of the Bosnian state in the future requires that the architects of governmental design should carefully consider the actual working models of states with similarly divided populations.

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<sup>88</sup> European Stability Initiative, “Making Federalism Work – A Radical Proposal for Practical Reform”, 8 January 2004. Available at [http://www.esiweb.org/reports/bosnia/showdocument.php?document\\_ID=48](http://www.esiweb.org/reports/bosnia/showdocument.php?document_ID=48).

Figure 1

## BELGIUM'S FEDERAL UNITS

### **REGIONS – territorial (geographic principle)**

Competencies: territorial issues, economy, agriculture, environment

Flanders

Wallonia

Brussels capital

,

,

,

fused

,

### **COMMUNITIES – non-territorial (personal principle)**

Competencies: linguistic and educational matters

,

,

Flemings

Francophones

Germans



Figure 2

## BOSNIA'S FEDERAL UNITS, POST-DAYTON

### OFFICIAL UNITS – territorial (geographic principle)

#### CENTRAL STATE LEVEL

Competencies: General foreign policy, immigration, customs/trade policy, monetary/finance policy, transportation between entities, cooperation with other states

#### ENTITIES

Competencies: Some relations with neighbouring states, law enforcement, human rights within borders, international agreements with and sometimes without parliamentary approval

Croat-Muslim Federation		Republika Srpska		Brčko
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#### SUB-UNITS

Competencies of entities devolved to lower levels, in subsidiary fashion

10 Cantons		None - centralized		small district
3 Croat-majority				
2 mixed Croat-Bosniac				
5 Bosniac-majority				

#### MUNICIPALITIES

Competencies: administration of city and township matters

### PROBLEM 1: heterogeneous territorial units

#### a. Individuals in the 'wrong' territorial unit who did not relocate during the war

#### b. Increasing minority returns

Total recorded minority returns, 1996 to November 2003:	432,345 <sup>89</sup>
Bosnia, total population:	3,400,000 <sup>90</sup>
Current minority returns as percentage of population (Individuals returning to 'wrong' side of inter-entity line):	12.72%

### PROBLEM 2: Interests of ethnic others often overrun by majority groups in each entity

Approximate population by group<sup>91</sup>

Bosniacs	44%
Serbs	31%
Croats	17%
'Others'	8%

<sup>89</sup> UNHCR statistics, available at

[http://www.unhcr.ba/return/Tot\\_Minority%20\\_GFAP\\_November\\_2003.pdf](http://www.unhcr.ba/return/Tot_Minority%20_GFAP_November_2003.pdf). Note: these figures are updated on a regular basis, and are expected to increase over time.

<sup>90</sup> Florian Bieber, "Bosnia and Herzegovina", *Nations in Transit*, 2002 (New York: Freedom House, 2002).

<sup>91</sup> Florian Bieber, "Bosnia and Herzegovina", *Nations in Transit*, 2002 (New York: Freedom House, 2002).

Figure 3

## POTENTIAL BOSNIAN STRUCTURES

### TERRITORIAL UNITS (geographic principle)

#### ***CENTRAL STATE LEVEL***

Competencies: Immigration, customs/trade policy, monetary/finance policy, transportation between entities, cooperation with other states; coordination of entity defence forces

#### ***ENTITIES***

Competencies: territorial law enforcement and human rights, economic issues, infrastructure, environment, and interaction with other states on these matters

Croat-Muslim Federation	Republika Srpska	Brčko (shared)
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#### ***SUB-UNITS***

Competencies of entities devolved to local levels, in subsidiary fashion

10 cantons, treated as mixed	none – centralized	small district
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#### ***MUNICIPALITIES***

Competencies: administration of city and township matters, in coordination with non-territorial communities in areas of language, education, religion, and culture

### NON-TERRITORIAL UNITS / COMMUNITIES (personal principle)

To be selected by state-wide ballot by individual self-declaration (vote for 1 of 5 below)

#### ***1. Representative and decision-making bodies***

Croats	Bosniacs	Serbs
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Competencies: linguistic, educational, religious and cultural matters, including

- enforcement of law and human rights in these areas, where personal principle applies
- coordination on these matters with municipalities where necessary
- coordination on these matters with other states

Note: non-territorial structure would allow for capacity to cast votes for presidential candidate by nationality, even if individual is in the 'wrong' territorial entity

#### ***2. Representative bodies to advise territorial and non-territorial units; may be in voting or advisory capacity***

'Yugoslavs'	'Others'
Individuals with mixed C-B-S identity	Individuals with other identities

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