

Conflict resolution between power sharing and power dividing, or beyond?

John McGarry and Brendan O'Leary, *The Northern Ireland Conflict: Consociational Engagements*. Oxford: Oxford University Press, 2004.

Philip G. Roeder and Donald Rothchild, *Sustainable Peace: Power and Democracy after Civil Wars*. Ithaca and London: Cornell University Press, 2005.

Brendan O'Leary, John McGarry and Khaled Salih, *The Future of Kurdistan in Iraq*. Philadelphia: University of Pennsylvania Press, 2005.

For more than thirty years, a debate has engulfed the theory and practice of ethnic conflict resolution between advocates of consociationalism and their opponents. For much of this time, this debate has primarily been an internal debate within the broader school of power sharing. On the one side in this debate were those who subscribed to the idea that conflict settlements were most stable and durable if they rested on relatively rigid institutional structures as originally described by Arend Lijphart in 1977: grand coalition of political parties representing all major segments in a divided society; proportionality of legislative and executive representation and more generally in public service employment and the allocation of public funding; minority veto rights on all essential decisions; and segmental autonomy (Lijphart 1977). Their opponents, chiefly among them Donald Horowitz (1985[2000], 1990, 1991, 2002, 2003, 2004, 2006), held that such arrangements were morally unacceptable and practically prone to collapse, and instead suggested mainly electoral mechanisms to induce moderation and conflict reduction, primarily the use of the Alternative Vote, a majoritarian preferential electoral system. The disagreements between consociationalists and integrationists have not subsided over the years,<sup>1</sup> but rarely in this debate has any one of its participants questioned the value of power sharing as a mechanism to resolve conflict in divided societies. The three volumes considered in this review speak to this debate as much as they aim to move beyond it, albeit in rather different directions.

John McGarry and Brendan O'Leary's *The Northern Ireland Conflict: Consociational Engagements* is a collection of their joint and individual writings on this conflict from 1987 to 2002. Given the prominence of the authors in the academic literature on Northern Ireland, this is worthwhile in itself, not least as it allows the reader to follow both events on the ground and the debate they inspired, as well as the intellectual development of the consociational discourse. McGarry and O'Leary present all their essays in their un-edited original versions, and critically reflect on their errors, such as O'Leary's recommendation for threatening the partition of Northern Ireland in a 1989 article for *Political Studies*.<sup>2</sup> The most important contribution, however, that this volume makes is its co-authored introduction on the lessons that Northern Ireland holds for consociational theory more broadly.

Northern Ireland and its 1998 Agreement, McGarry and O'Leary maintain, "highlights six important weaknesses in traditional consociational theory" (McGarry and O'Leary p. 5). These are the neglect of external actors; the trans-state nature of some self-determination disputes and the necessary institutional arrangements to address them; the increasing complexity of conflict settlements in which consociational arrangements form an important element but require complementary mechanisms to deal with "the design of the police,

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<sup>1</sup> Cf., for example, Noel (2005) and O'Flynn and Russel (2006).

<sup>2</sup> Brendan O'Leary, "The Limits of Coercive Consociationalism in Northern Ireland", *Political Studies*, vol. 37, no. 4, pp. 452-468, here Chapter 3, pp. 97-131.

demilitarization, the return of exiles to their homes, the management of prisoners, education reform, economic policy, and the promotion of language and other group rights" (p. 13); terminological and conceptual inaccuracies, primarily associated with Lijphart's grand coalition requirement; the merits of preferential proportional electoral systems, i.e., the Single Transferable Vote (STV); and the allocation of cabinet positions by means of sequential proportionality rules, i.e., the d'Hondt mechanism.

In dealing with these weaknesses, McGarry and O'Leary offer both refinements of, and advancements to, traditional consociational theory. The refinements relate, first, to the technical side of consociational institutions, where the authors recommend STV instead of List-PR as an electoral system as it militates against the proliferation of micro-parties. Second, McGarry and O'Leary elaborate the usefulness of sequential proportionality rules, such as the d'Hondt mechanism or the Sainte-Laguë method, in the allocation of cabinet positions in order to avoid protracted bargaining between parties and increase parties' incentives to remain part of cross-communal coalitions.

The advancements to traditional consociational theory offered by the two authors in this introductory chapter, but also elsewhere in their recent writings (e.g., McGarry 2006, O'Leary 2005), are a significant step forward in that they address both long-standing criticisms of consociationalism and a gap between consociational theory and conflict resolution practice. McGarry's and O'Leary's observations on external actors bring consociational theory in line with an established debate in international relations on the role of third parties in conflict resolution (see for example contributions in Carment and Schnabel 2003, Diehl and Lepgold 2003, Otunnu and Doyle 1998, Pugh and Singh, 2003, Thakur and Schnabel 2001, Walter and Snyder 1999). Equally importantly, their discussion of the provisions in the 1998 Agreement that go beyond domestic institutions and address the specific 'Irish dimension' of the Northern Ireland conflict reflect a growing awareness among scholars and practitioners of conflict resolution that many ethnic conflicts have causes and consequences beyond the boundaries of the states in which they occur and that for settlements to be durable and stable, these dimensions need addressing as well. In the case of the 1998 Agreement for Northern Ireland, McGarry and O'Leary highlight three dimensions: cross-border institutions which formalise cooperation between the Northern Ireland Executive and the Irish government (the so-called North-South Ministerial Council) and renew British-Irish inter-governmental cooperation (the British-Irish Inter-governmental Conference); the explicit recognition of the two governments of the right to self-determination of the people in Northern Ireland and the Republic, i.e., the possibility for them to bring about, in separate referenda, a united Ireland if that is the wish of respective majorities; and new institutions of regional cooperation, incorporating the UK and Irish governments, and the executive organs of the other two devolved regions in the UK and its three dependent island territories in the Channel and the Irish Sea.

These arrangements have earlier precedents in the history of conflict settlement in Northern Ireland, but they are not unique to this case alone. Institutions of cross-border cooperation have been utilised as part of comprehensive peace settlements elsewhere as well—for example, in South Tyrol and Bosnia and Herzegovina—and exist, of course, in less conflict-prone situations as part of arrangements between sovereign states and/or sub-state entities—for example, in the EU's Euroregions. The EU itself, at the same time, is one of the most successful cases of regional integration (albeit among 'equal' partners at the state or sub-state level), while the Nordic Council offers arrangements similar to the British-Irish Council in bringing together sovereign states and self-governing territories within them (cf. Danspeckgruber 2005, Naucmér 2005).

As far as the possibility of future status changes are concerned, this, too, is not unique to Northern Ireland or indeed the 1998 Agreement. In recent Northern Ireland history, a so-called border poll took place in 1973 but was near-completely boycotted by Nationalists and Republicans. There had also been an initial British commitment to hold such polls in ten-year intervals, but this was unceremoniously and quietly abandoned. Farther afield, the people of the Autonomous Republic of Gagauzia in Moldova have a one-time opportunity to exercise their right to (external) self-determination if Moldova were to join Romania. The Comprehensive Peace Agreement for Sudan offers the people in the South a referendum on independence after six years, while the Bougainville Peace Agreement includes a clause that envisages a referendum on independence to be held in Bougainville after ten to fifteen years. Crucially, in all these situations and including Northern Ireland, the signatory parties have committed to respecting the outcome of these referenda.

A final, and perhaps the most significant, advancement of consociational theory is McGarry and O'Leary's contention that Lijphart's grand coalition requirement is overstated, as "what makes consociations feasible and work is joint consent across the significant communities, with the emphasis on jointness" (McGarry and O'Leary, p. 15). On that basis, the authors distinguish "unanimous consociations (grand coalitions),<sup>3</sup> concurrent consociations (in which the executive has majority support in each significant segment) and weak consociations (where the executive may have only a plurality level of support amongst one or more segments)<sup>4</sup>" (ibid.). Jointness, more generally, implies equality and co-operation across blocs and some genuine consent among the relevant mass publics for a democratic consociation and thus excludes just any coalition, as well as cooptation of unrepresentative minority "leaders".

Power sharing, consociational and otherwise, and its role in conflict resolution is also a central concern of the other two books considered in this review essay. O'Leary, McGarry and Salih's *The Future of Kurdistan in Iraq* examines various dimensions of this concept in the context of a single case study, while Philip Roeder and Donald Rothchild's volume *Sustainable Peace: Power and Democracy after Civil Wars* offers a wider range of case studies from around the world. In addition, both volumes include very valuable conceptual chapters on institutional design on which I will primarily focus in the following.

The bottom-line of Roeder and Rothchild's volume is that power sharing is a useful short-term mechanism to overcome commitment problems that may prevent conflict parties in the immediate aftermath of civil wars to agree to and stick with a peace settlement, but that it is detrimental to peace and stability in the long term. Instead, the editors, and their contributors, recommend power

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<sup>3</sup> O'Leary later refers to this also as "complete consociations".

<sup>4</sup> The subsequent assertion, also repeated in other writings, that "[c]onsociations become undemocratic when elites govern with factional or lower levels of support within their segments" (McGarry and O'Leary, p. 15) is less convincing in my view. Assuming that 'support' means electoral support, a consociation is democratic or not if its executive emerges in free and fair elections, not if it fulfils certain numerical tests. Implicitly, what seems to be at stake is less the democratic credentials of the arrangement, but its consociational nature, especially the criterion of jointness. By extension, such an arrangement might also prove less stable compared to one in which an executive can rely on broader levels of support. Insisting that plurality support is a minimum requirement for democratic consociations is also empirically not without difficulties. In South Tyrol, for example, the only formal requirement for the provincial executive is that it must reflect the numerical strength of the linguistic groups as represented in the Provincial Parliament. This means that an Italian party with less than plurality support can become a coalition partner of a German party as long as it sends sufficient numbers of ministers into the provincial cabinet that reflect the total numerical strength of all Italian parties in the provincial parliament and provided that this government commands the required majority in parliament.

dividing as an alternative strategy to manage conflict in ethnically (or otherwise) diverse societies. Power dividing is seen as “an overlooked alternative to majoritarian democracy and power sharing” as institutional options in ethnically divided societies (Roeder and Rothchild, p. 6). Three strategies that are said to be central to power dividing—civil liberties, multiple majorities, and checks and balances—in practice result in an allocation of power between government and civil society such that “strong, enforceable civil liberties ... take many responsibilities out of the hands of government”, while those that are left there are distributed “among separate, independent organs that represent alternative, cross-cutting majorities”, thus “balanc[ing] one decisionmaking centre against another so as to check each majority ... [f]or the most important issues that divide ethnic groups, but must be decided by a government common to all ethnic groups” (Roeder and Rothchild, p. 15).

The key institutional instruments by which power dividing is meant to be realised are, first of all, extensive human rights bills that are meant to leave “key decisions to the private sphere and civil society” (Roeder and Rothchild, p. 15). Second, separation of powers between the branches of government and a range of specialised agencies dealing with specific, and clearly delimited, policy areas are to create multiple and changing majorities, thus “increas[ing] the likelihood that members of ethnic minorities will be parts of political majorities on some issues and members of any ethnic majority will be members of political minorities on some issues” (Roeder and Rothchild, p. 17). Third, checks and balances are needed “to keep each of these decisionmaking centres that represents a specific majority from overreaching its authority” (ibid.). Thus, the power-dividing approach favours presidential over parliamentary systems, bicameral over unicameral legislatures, and independent judiciaries with powers of judicial review extending to acts of both legislative and executive branches. As a general rule, power dividing as a strategy to keep the peace in ethnically divided societies requires “decisions [that] can threaten the stability of the constitutional order, such as amendments to peace settlements” be made by “concurrent approval by multiple organs empowering different majorities” (Roeder and Rothchild, p. 17).

Rejecting the classic options of majoritarian democracy, power sharing, protectorates, and partition as long-term solutions that can provide stable democracy after civil wars, Roeder and Rothchild advocate the power dividing arrangements associated with the US constitution: civil liberties, multiple majorities, and checks and balances (Roeder and Rothchild, p. 15). In order to substantiate this assertion, Roeder and Rothchild and their contributors address five different sets of issues in their volume: the suitability of different power sharing regimes to lead to peace and democracy; their likely success at different stages in the transition from civil war to stable democracy; different factors that condition the success of power sharing arrangements and institutions; whether alternative options are more likely to lead to stability and lasting peace; and whether a comprehensive strategy of intervention with phased institutions appropriate at different stages of the transition from civil war to democracy is possible.

This is a sound approach and the volume overall benefits from contributors who follow Roeder and Rothchild’s lead and examine these questions in considerable theoretical and empirical depth. Thus, Matthew Hoddie and Caroline Hartzell find that “[i]n particular...both military and territorial power sharing have a positive role to play in fostering post-war peace” and that “[t]hese provisions have the demonstrated capacity to set the stage for the period of transition by enhancing a sense of confidence among former enemies that their interests will not be jeopardised in the context of the postwar state” (Roeder and Rothchild, p. 103). They also note the importance to think beyond power sharing at the level of

central government and to include other mechanisms, such as military, territorial and economic power sharing all of which prove important in combination rather than in isolation (*ibid.*).

Oddly enough, the following chapter, by David Lake and Donald Rothchild, presents a very different set of findings: instability as an almost certain consequence of territorial decentralisation (i.e., territorial power sharing in Hoddie and Hartzell's terms). Lake and Rothchild argue that three strategic problems—governance, the incompleteness of constitutions, and transient majorities—make it difficult for institutional arrangements of territorial decentralisation to provide long-term peace and stability (Roeder and Rothchild, pp. 125-130). The only circumstances in which they are optimistic about territorial decentralisation is "when there are multiple regions with numerous crosscutting political cleavages and relatively balanced capabilities" (Roeder and Rothchild, p. 130). Additionally, Lake and Rothchild note that decentralisation is likely not to have unintended negative consequences in the face of "general fatigue with war, the development of a commitment to resolve disputes through bargaining and reciprocity, and the emergence of respect and good will among the parties" (Roeder and Rothchild, p. 132). This does certainly not contradict Hoddie and Hartzell's findings; on the contrary it reinforces one important observation of theirs, namely that different (power sharing) mechanisms work best in combination with each other.

This emphasis on considering conflict resolution mechanisms as a package rather than individually, unsurprisingly, is also one of the conclusions drawn by Valerie Bunce and Stephen Watts in their chapter on the post-communist states of Eurasia. While they also favour a unitary state approach, they find that "[i]ts success depends on whether it is combined with some other key characteristics, such as guarantees of minority rights and cultural autonomy, and separation of powers and proportionality in electoral systems" (Roeder and Rothchild, p. 139). This proportionality claim, however, is disputed by Reilly, whose examination of nine stable democracies in divided societies finds that only four use PR, and further suggests that "[t]here are no examples of an ethnically plural long-term democracy outside the developed world using PR" (Roeder and Rothchild, p. 171). As Reilly also emphasises the impact of other factors on what is essentially a question of how well election outcomes reflect the diversity of a given society, such as the geographic distribution of ethnic groups in a country, the question of PR vs. majoritarian/plurality electoral systems seems less relevant anyway. What matters is, again, the right package of institutions, which, as Reilly notes, can in some cases mean a "combination of plurality elections and federalism" (Roeder and Rothchild, p. 170)

Eduardo Alemán and Daniel Treisman examine the role of fiscal politics, especially of fiscal decentralisation and proportionality, in mitigating secessionism. Using four case studies—India, Pakistan, Nigeria and the former Yugoslavia—they find that there is "meagre support for those tempted to include fiscal decentralisation and proportionality as elements of civil war settlements" (Roeder and Rothchild, p. 216). This is a somewhat problematic generalisation, as the four cases are highly diverse contextually, providing examples of pre- and post-civil war violence and rather different structural and institutional settings. Alemán and Treisman acknowledge this earlier, and in line with most other contributors to Roeder and Rothchild's collection, emphasise the effectiveness of fiscal decentralisation "will depend on how—and in what context—it is used" (Roeder and Rothchild, p. 216).

The four chapters that follow these more broadly conceptual and comparative exercises focus on individual case studies: Lebanon, India, Ethiopia, and South Africa. They all have some good things to say about power sharing but remain

largely sceptical of its overall and long-term value. Marie-Joëlle Zahar uses Lebanon to make the point that power sharing there depended on external guarantors and as such did bring long periods of peace to the country but in the long run inhibited the country's transition to democracy. Edmond Keller and Lahra Smith in their study of Ethiopia have to deal with a rather different experiment in federalisation, one that largely failed in its implementation because of a lack of state capacity (limited funds, insufficient qualified personnel, and material scarcity) and the emergence of new conflicts following federalisation.

Amit Ahuja and Ashutosh Varshney describe the success of federalism in India as an exception in a more general pattern of failure of power sharing to provide peace and stability in ethnically diverse societies. They focus on a number of factors that facilitate the success of Indian federalism. These are to some extent of a technical and structural nature and relate to the way in which the political process is organised institutionally in India. Yet perhaps most crucially, Ahuja and Varshney emphasise the importance of India being a nation, that is, the country as a whole and its constituent groups having a clear sense of their joint nationhood. The argument then is that where belonging to the nation (and by extension, the state) is by-and-large not disputed, mechanisms can be found to manage diversity effectively and peacefully. Put more trivially, if people want to live together, they can find ways to do so.

The final case study, a comparative analysis of South Africa, Northern Ireland, and Bosnia and Herzegovina, by Timothy Sisk and Christoph Stefes, brings the volume full circle to the earlier Hoddie and Hartzell chapter and Roeder and Rothchild's introduction. Sisk and Stefes endorse the finding that power sharing is a useful, and often desirable and necessary tool to make the transition from war to peace. Specifically, they argue that the South African experience "may have lessons for other attempts to build flexibility in institutional design and a deeper base of moderation throughout society" (Roeder and Rothchild, p. 299). Examining Northern Ireland and Bosnia and Herzegovina in light of the South African experience, Sisk and Stefes assert that "postwar societies need to move beyond the mutual hostage-taking that a guaranteed place at the decisionmaking table implies, the immobilism it inevitably creates, and the construction of postwar societies around the fixed and unyielding social boundaries of ethnicity" (Roeder and Rothchild, p. 317). While they see advantages in "centripetal democratic solutions" they rightly caution that these can succeed "only if the crosscutting integration in civil society on which they rely can be achieved over time" (Roeder and Rothchild, p. 317).

Finally, Roeder and Rothchild offer their conclusions and policy recommendations. This "nation-state stewardship" seeks to limit "power sharing to two tactical roles in the initiation phase", i.e., the early period in the transition from civil war to peace. These two roles, according to Roeder and Rothchild, are an "offer by a majority to reassure minorities about the peace implementation process" and "a principle of proportionality for one-time, pump-priming decisions, such as the initial staffing of new bureaucracies and the armed forces" (Roeder and Rothchild, p. 320). They also reiterate an earlier point made in their introduction, and in a similar way by Lake and Rothchild in their chapter on territorial decentralisation, namely that for power sharing to work after civil wars, extraordinary, and thus highly unlikely, circumstances need to be in place, primarily a shared national identity and an abundance of resources (Roeder and Rothchild, p. 323). As a consequence, they find that power sharing is likely to lead to "institutional instability, the escalation of conflict, and blocked transitions to democracy" (Roeder and Rothchild, p. 325). They are equally critical of outside intervention, which they claim "exacerbates many of the dilemmas of power sharing" and, in fact, introduces additional problems in itself (Roeder and Rothchild, p. 328).

Instead of endorsing power sharing beyond the initiation phase of peace and democracy, Roeder and Rothchild offer nine policy recommendations for the strategy of nation-state stewardship (Roeder and Rothchild, pp. 337-345): constituting nation-states: create or hold together only those states in which constituent groups share a sense of nationhood and agree to live together; limiting government to minimise contentious issues that are decided centrally; delaying intervention until a clear victor emerges; lengthening protectorates to give moderates a chance to emerge; building institutions from the ground up so that local institutions of self-governance can emerge before central ones; phasing withdrawal in accordance with the build-up of local capacity; dividing power between different institutions and arenas such that ethnic stakes in politics are lowered; broadening negotiations for long-term arrangements to include other than just ethnically defined interest groups in the decision-making process; and limiting power sharing in favour of direct rule by the international community.

The issues raised in Roeder and Rothchild's volume are relatively similar to the discussion about *The Future of Kurdistan in Iraq*, edited Brendan O'Leary, John McGarry and Khaled Salih. The contributions in this volume, published in 2005 generally reflect the status of and in Iraq prior to the constitutional referendum of 2005 and are drawn from papers given at two conferences before and after the war. Overtaken by events in some of the technical detail, the volume as a whole has very important insights to offer into today's Iraq and presents a significant contribution to the wider debate on institutional design in divided societies. This is reflected well in the book's structure, which, following an introduction to the geopolitical and other realities of the Kurdish nation and its different settlement areas, comprises four chapters on 'federative possibilities', four on 'legacies' of the past', and three on 'immediate issues', as well as a postscript by O'Leary, and two appendices with the Kurdish constitutional proposal and the transitional administrative law of Iraq. In accordance with the purpose of this review, I shall focus on those chapters that deal primarily with institutional design.

Brendan O'Leary examines at length the provisions of the 2003 transitional administrative law for Iraq, and proposes that long-term constitutional arrangements for a federal, democratic, and pluralistic Iraq be implemented through "power-sharing within a 'pluralist federation' for Iraq and 'federacy' arrangements for Kurdistan" (O'Leary, McGarry and Salih, p. 48). This is manifest in the emphasis placed on the importance of consensual decision-making in the federal government, the empowerment of regions as holders of real and autonomous competences vis-à-vis the centre, and the importance of recognising different identities in a new Iraq.

Contrary to arguments advanced by many critics of pluri-national federations, O'Leary notes that "[t]here are major enduring pluri-national federal democracies, most notably Canada, Switzerland, and India" and suggests that new ones might be emerging, including "Belgium, Spain, Indonesia, Nigeria and South Africa" (O'Leary, McGarry and Salih, p. 70). Drawing on both successful and failed pluri-national federations, O'Leary also offers a list of factors that account for success or failure. Success criteria include the voluntary and democratic nature of the federation, the recognition of constituent nations and their enjoying either territorial and/or non-territorial self-governance, consensual decision-making at the centre, equitable management of resource conflicts and promotion of economic development, and the absence of spoilers in the neighbourhood.

Focusing then on the consociational requirements in a future Iraqi pluri-national federation, O'Leary discusses in some detail proportional electoral systems,

language use and veto rights before outlining what he considers the only feasible solution: federation for Iraq and federacy for Kurdistan, accompanied by appropriate power sharing arrangements at the central and regional levels. While not being overly optimistic for even that solution to bring peace, democracy and prosperity to Iraq, "the real alternatives to a genuine pluralist federation for Iraq and federacy for Kurdistan are either continuing occupation or an implosion, with secessions accompanied by interventions from neighbouring states" (O'Leary, McGarry and Salih, p. 82). Unfortunately, at the time of writing this review essay, this seems to be the direction into which Iraq is headed.

O'Leary's proposals for Iraq's future constitutional structures are well complemented by John McGarry's analysis of the relevance of the Canadian federal experience. Rejecting US-style federalism, he advocates for "a single federal unit including most Kurds and in which Kurds form a strong majority" (O'Leary, McGarry and Salih, p. 95), substantive and wide-ranging assignment of powers to self-governing entities, including some competences in the area of foreign policy and defence (O'Leary, McGarry and Salih, pp. 98-101). Engaging explicitly with the idea of power dividing, McGarry argues that power-dividing mechanisms would not be sufficient to ensure stability in Iraq, but rather that they need to be complemented with more formal and guaranteed power sharing mechanisms that make shared government at the centre a desirable reality, and one that ties self-governing entities to the centre without encroaching on their powers. In this view, the failure of pluri-national federations is not caused by too much power of *self-government*, but by their insufficient involvement in structures of *shared government* (O'Leary, McGarry and Salih, p. 101).

Finally, McGarry (O'Leary, McGarry and Salih, pp. 108-110) focuses on the need for common and enforceable human rights standards across Iraq. This could take the shape of regional bills of rights alongside federation-wide rights giving federal institutions the right to intervene in federal entities if they are seen to infringe constitutional and other state-wide human rights provisions, but, bearing the Quebec experience in mind, argues that "this should be done consistently with the rights of Kurds, as a distinct national community, to exercise self-government and protect Kurdish culture within the Kurdish region" (O'Leary, McGarry and Salih, p. 110).

Drawing on these theoretical and comparative insights in the two preceding chapters, Karna Eklund, Brendan O'Leary and Paul R. Williams explore the process of 'Negotiating a Federation in Iraq' in Chapter 4. In it, they explain both the dynamics of negotiating crucial bargains on territorial autonomy, military forces and power sharing structures and the likely acceptable outcomes, from the perspective of Kurdish negotiators. The chapter benefits from a healthy dose of realism about the probability of such a constitution to come into being, and it is to the credit of Eklund, O'Leary and Williams that the actual constitution of Iraq features many of the institutions they predicted as necessary for a bargain to emerge among Kurds, Shi'a and Sunnis.

The mere existence of this institutional bargain, however, does not say much about the probability of its endurance. Looking at the situation in Iraq at the end of 2006, institutions seem to matter little amid the increasing violence and talk of withdrawal by US and UK government officials. To the credit of the editors of *The Future of Kurdistan in Iraq*, not only are they cautious as far as the likelihood of the constitutional prescription goes to bring peace, democracy and prosperity to Iraq, but they also included contributions that are generally more pessimistic about the stability of peace in the Kurdish region (Gareth Stansfield), the ability of any constitution to hold Iraq together as a state (Peter W. Galbraith), and the stamina of the US-led coalition to stay the course (Karin von Hippel).

Leaving aside the specific empirical detail of Iraq or any other case discussed in the three volumes under consideration here, there are important insights on offer for conflict resolution more generally.

From the perspective of conflict resolution in divided societies, institutional design needs to address a number of issues. These include (1) the composition and powers of the executive, legislative and judicial branches of government and the relationship between them; (2) the structure and organisation of the state as a whole; and (3) the relationship between individual citizens, identity groups and the state.

The key aspects of institutional design in the first area relate, first, to the nature of the government system, i.e., whether it is a parliamentary, presidential or semi-presidential system. A second dimension is the issue of whether executive power sharing is mandatory, and if so, what the extent of prescribed inclusiveness is. Inclusiveness, at the same time, is also an important feature of legislative design and is primarily realised through the choice of an electoral system. Power sharing features and inclusiveness may also extend into the judicial branch, primarily in relation to provisions for the appointment of judges and prosecutors. A final issue in this regard is the overall relationship between the three institutions of government, that is, the degree of separation of powers between them. While this partially relates to the choice of government system, it is also about the degree of independence of the judicial branch and its powers of legislative and executive oversight. Institutional design thus not only prescribes certain outcomes in relation to the composition of the executive, legislative and judicial branches of government and the structure and organisation of the state as a whole but also entrenches them in different ways from hard international law to domestic legislation.

The most important institutional design challenge in relation to the structure and organisation of the state as a whole has to do with the territorial organisation of the state. While the principal choice is generally between unitary and federal systems, there is a great deal of variation within these two main categories, and there are a number of hybrid forms as well. The most important institutional design decision is about the number of layers of authority with substantive decision-making competences and the extent of these competences. Several further decisions follow from this. The first one relates to the structural and functional symmetry of the political-territorial organisation of the overall state. On the one end of the spectrum, a state may be organised territorially in a completely symmetric fashion with all territorial entities enjoying the exact same degree of functional competences, exercising them through an identical set of local political institutions. However, the nature of institutional design in divided societies may necessitate a different approach. Thus, even where there is structural symmetry, functionally speaking the competences enjoyed by different self-governing entities may differ, and/or they may exercise them through different sets of political institutions. For example, where territorial sub-state entities comprise ethnic groups distinct from that of the majority population, they may be granted additional competences to address the particular needs of their communities. In cases in which these sub-state entities are ethnically heterogeneous, executive power sharing, reflecting local ethnic and political demographics, might be an additional necessary feature of conflict resolution.

A second element of institutional design as far as the structure and organisation of the state as a whole are concerned relates to coordination mechanisms, including dispute resolution arrangements, between different layers of authority. This is primarily related to the different types of such mechanisms (e.g.,

cooptation, joint committees, judicial review) and their leverage (consultative vs. legally binding).

As far as the relationship between individual citizens, identity groups and the state is concerned, institutional design is about the recognition and protection of different identities by the state. On the one hand, this relates to human and minority rights legislation, that is, the degree to which every citizen's individual human rights are protected, including civil and political rights, as well as the extent to which the rights of different identity groups are recognised and protected. While there may be a certain degree of tension between them, such as between a human rights prerogative of equality and non-discrimination and a minority rights approach emphasising differential treatment and affirmative action, the two are not contradictory but need to complement each other in ways that reflect the diversity of divided societies and contribute to its peaceful accommodation.

Secondly, the relationship between individuals, groups and the state is about the degree to which institutional design favours particular groups and excludes others. This is related to whether different groups are given different status and the political, economic and resource implications of this (e.g., mandatory inclusion in government, participation in proportional public sector job allocation, reception of public funding, etc.). In other words, the question here is about the degree to which specific group identities are recognised and protected and how this manifests itself in the way in which the boundaries of authority are shaped by territory or population groups.

Consociationalists and power dividers generally acknowledge the importance and usefulness of institutional design in conflict resolution, but, as detailed above, offer rather different prescriptions as the most appropriate models to achieve stable conflict settlements. Drawing on the preceding discussion of all three books, it appears that, while there are fundamental differences in the underlying assumptions about how such settlements can succeed, certain institutional arrangements that complement the basic prescriptions of each approach are relatively similar.

These theoretical divisions to one side, it is also important to consider how accurately the two theories reflect conflict resolution practice. One of the most striking features of conflict resolution practice over the last decade and a half, as well as prior to that, is that the overwhelming majority of settlements involve a form of territorial self-governance for an aggrieved minority (or minorities). Especially if one considers not only post-civil war cases, there is a large number of such settlements that provide evidence for this trend in North America (Canada), Central and South America (Panama, Colombia, Mexico, Ecuador and Nicaragua), Africa (Sudan, Zanzibar),<sup>5</sup> Asia (India, Indonesia, Iraq, Papua New Guinea and Philippines), and Europe (Belgium, Bosnia and Herzegovina, Macedonia, Moldova, Russia, Serbia and Montenegro,<sup>6</sup> Ukraine and United

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<sup>5</sup> Proposals for decentralisation/federalisation also exist in Ethiopia, Nigeria and the Democratic Republic of Congo, but in all three cases lack serious implementation efforts. I am grateful to Sandra Joireman and Donald Rothchild for providing me with this information.

<sup>6</sup> The 2003 constitution of the Union of Serbia & Montenegro provided for a bi-national federation between the two entities and included an option for Montenegrin independence after three years if at least 55% of people participating in a referendum would opt for it. The referendum was held on 21 May 2006, and Montenegro declared its independence on 3 June after the country's referendum commission confirmed as official the preliminary result which had already been recognised by all five permanent members of the UN Security Council on 23 May.

Kingdom).<sup>7</sup> In addition, proposals for territorial self-governance regimes also figure prominently in proposed peace agreements, including in the Annan Plan for Cyprus, the Georgian president's peace initiative for South Ossetia, and Sri Lanka. Thus in virtually every conflict situation involving self-determination claims by territorially relatively concentrated identity groups at least proposals for territorial self-governance have been made. In many of them, these proposals have been implemented.

This wide-spread use of territorial self-governance regimes in the resolution of (ethnic) self-determination conflicts around the globe reflects the assumption that such regimes can contribute to local, national, regional and international stability. In ethnically, linguistically and/or religiously heterogeneous societies in which corresponding group identities have formed and become salient, the degree of self-governance enjoyed by the different segments of society is often seen as more or less directly proportional to the level of acceptance of an overall institutional framework within which these different segments come together. Self-governance regimes are thus also meant to provide institutional solutions that allow the different segments of diverse societies to realise their aspirations for self-determination while simultaneously preserving the overall social and territorial integrity of existing states. In doing so, self-governance regimes above all, offer mechanisms for conflict parties to settle their disputes by peaceful means. Yet, territorial self-governance on its own is often insufficient to offer viable solutions to self-determination conflicts; and this is why normally a range of further conflict resolution mechanisms are required to ensure that an overall stable and durable democratic settlement can be achieved. This has been increasingly understood by practitioners of conflict resolution and has led to an emerging practice of conflict settlement that I refer to as "complex power sharing".<sup>8</sup>

Complex power sharing, in the way I define it, refers to a practice of conflict settlement that has a form of self-governance regime at its heart, but whose overall institutional design includes a range of further mechanisms for the accommodation of ethnic diversity in divided societies, including those recommended by advocates of consociationalism, such as McGarry and O'Leary, and power-dividing, such as Roeder and Rothchild, as well as integrationism, such as Horowitz, Reilly (2001), Sisk (1996), and Wimmer (2003). Complex power sharing is thus the result of the implementation of a self-governance regime whose success as a conflict settlement device requires a relatively complex institutional structure that cannot be reduced to autonomy/(ethno-)federalism, (traditional) power sharing or power-dividing.

In their determined rejection of power sharing as a long-term mechanism for conflict resolution (both in its consociational variant and in the form of territorial self-governance), Roeder and Rothchild are clearly at odds with the predominant trend of conflict resolution practice. This does not say anything about the

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<sup>7</sup> This is not meant to be a comprehensive list of cases. For an analysis of some examples and general trends in the spread of territorial self-governance regimes as part of conflict settlements, see contributions in Weller and Wolff (2005).

<sup>8</sup> I borrow the term 'complex power-sharing' from a research project funded by the Carnegie Corporation of New York ("Resolving Self-determination Disputes Through Complex Power Sharing Arrangements"). In this project, complex power-sharing regimes are distinguished "in that they no longer depend solely on consociational theory, or solely upon integrative theory", involve international actors that "are often key in designing, or bringing experience to bear upon, the structure of the eventual agreement, or its implementation" and "consider a far broader range of issues ... and ... address structural issues as diverse as economic management, civil-military relations and human and minority rights, and ... do so at many different levels of government", thus recognising "that at different levels of government, different strategies may be more, or less, applicable, and consequently more, or less, successful, in engendering peace and stability" (Kettley, Sullivan, Fyfe 2001: 4-5). O'Leary (2005: 34-5) uses the term 'complex consociation' in a similar manner.

practical validity of their theory of power dividing nor does it automatically make power sharing the only valid solution. Moreover, power-sharing solutions as advocated by McGarry and O'Leary *in practice* incorporate many of the sensible recommendations that Roeder and Rothchild make about separation of powers, and the provision and enforcement of human and minority rights standards. To be sure, these are not concepts that are alien to, or incompatible with consociational theory and practice, but they are not primarily associated with it either. On the other hand, complex power sharing reflects in practice what the editors and contributors to all three volumes implicitly recognise: there is no single mechanism that can resolve ethnic conflict *per se*, but that a range of mechanisms beyond the core prescriptions of each theory are necessary for peace and democracy to prevail over violence.

The concrete cases examined in these three volumes predominantly are also cases in which territorial self-governance is at the heart of any actual or possible solution. McGarry and O'Leary deal with Northern Ireland and Iraq: the Northern Irish consociation as established in the 1998 Agreement and revised by the St Andrews Agreement of 2006 is only possible as a result of establishing territorial self-governance; territorial self-governance for the Kurds is the *sine qua non* of their engagement with Iraq. Contributions in Roeder and Rothchild's volume, even though they are in their majority more critical of territorial self-governance, cannot but acknowledge that this mechanism is embraced in negotiated settlements of conflicts.

The kind of liberal consociationalism that McGarry and O'Leary propose thus seems to be more open to such an inclusive approach to conflict settlement that is not confined within its own normative-theoretical preferences and that can (and needs to) complement its primary recommendations with elements of power-dividing (as well as integrationist power sharing). Within a liberal consociational framework, there is room for a range of power-dividing strategies, including a strong role for judicial entrenchment and enforcement mechanisms, and universally applicable and enforceable human rights legislation. Liberal consociationalism is also open to a vertical division of power on the basis of non-ascriptive, i.e., non-ethnic criteria, but in contrast to power-dividing (and integrative power sharing) does not rule it out either should self-determined entities on that basis emerge and desire territorial or corporate self-governance.

A final question can be posed: Is complex power sharing a feasible alternative to the purist implementation of existing theories, or is it the result of misguided and ill-informed diplomats and policy makers making choices of short-term convenience rather than long-term prudence? There is little point in making immodest claims at this stage about the feasibility of complex power sharing as a conflict resolution strategy equal, if not superior to what existing theories prescribe. While complex power sharing practice *may* eventually lead to a synthesis of existing theories in a complex power sharing framework, there is as yet not enough real-world evidence about how stable such regimes can be under varying conditions.<sup>9</sup> Some of them have proven relatively stable over time (i.e., over ten years): Belgium, Brussels, Bosnia and Herzegovina, Crimea, and South Tyrol. Northern Ireland has, despite incomplete implementation, achieved a very significant reduction of violence and the continued peaceful and political engagement of the conflict parties in an effort to find a permanent and acceptable solution for all. Others, including Bougainville, South Sudan and Macedonia are too short-lived to provide reliable data about their long-term stability. Mindanao

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<sup>9</sup> For some initial comparative analysis of complex power sharing in practice see Wolff (2004 and forthcoming). See also individual case studies published on the website of "The Cambridge Carnegie Project on Resolving Self-Determination Disputes Using Complex Power-Sharing" at <http://www.intstudies.cam.ac.uk/centre/cps/>.

has only achieved partial success in bringing peace to a troubled region of the Philippines. In all these cases, however, further analysis is required to determine causal relations between institutional design and the durability of peace. Having said that, neither is power sharing generally doomed to collapse in renewed violence as Roeder and Rothchild's power-dividing theory implies (nor is consociationalism practically dangerous or morally unjustifiable as some of its integrationist critics tend to suggest).

In order to move beyond the rigid theoretical divisions between consociational (and integrationist) power sharing and power dividing, that is for complex power sharing to develop into a theory of its own, further research is necessary. Complex power sharing describes a particular phenomenon of conflict resolution practice in adequate detail, but more work needs to be done to increase its predictive capabilities (i.e., when are complex power sharing regimes likely to emerge) and its explanatory value (i.e., when and why does it succeed). Only then will it be possible to make sure that complex power sharing does not emerge accidentally in practice as a patchwork of different conflict resolution mechanisms cobbled together to accommodate a wide range of diverse (and most likely, incompatible) interests, but to provide a framework within which stable, lasting and ultimately successful conflict settlements can be designed.

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