

Conflict Resolution between Power Sharing and Power Dividing, or Beyond?

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McGarry, J. and O'Leary, B. (2004) *The Northern Ireland Conflict: Consociational Engagements*. Oxford: Oxford University Press.

Roeder, P. G. and Rothchild, D. (2005) *Sustainable Peace: Power and Democracy after Civil Wars*. Ithaca NY and London: Cornell University Press.

O'Leary, B., McGarry, J. and Salih, K. (2005) *The Future of Kurdistan in Iraq*. Philadelphia PA: University of Pennsylvania Press.

For more than 30 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 one 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 (1990; 1991; 2000; 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 (compare, for example, Noel, 2005; O'Flynn and Russel, 2006), 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 events on the ground and the debate they inspired, as well as the

1 intellectual development of the consociational discourse. McGarry and O'Leary
2 present all their essays in their unedited original versions, and critically reflect on
3 their errors, such as O'Leary's recommendation for threatening the partition of
4 Northern Ireland in a 1989 article for *Political Studies* (O'Leary, 1989; McGarry
5 and O'Leary, 2004, ch. 3). The most important contribution, however, that this
6 volume makes is its co-authored introduction on the lessons that Northern
7 Ireland holds for consociational theory more broadly.

8
9 Northern Ireland and its 1998 Agreement, McGarry and O'Leary maintain,
10 'highlights six important weaknesses in traditional consociational theory'
11 (McGarry and O'Leary, 2004, p. 5). These are the neglect of external actors; the
12 trans-state nature of some self-determination disputes and the necessary institu-
13 tional arrangements to address them; the increasing complexity of conflict settle-
14 ments in which consociational arrangements form an important element but
15 require complementary mechanisms to deal with 'the design of the police,
16 demilitarization, the return of exiles to their homes, the management of prison-
17 ers, education reform, economic policy, and the promotion of language and other
18 group rights' (p. 13); terminological and conceptual inaccuracies, primarily asso-
19 ciated with Lijphart's grand coalition requirement; the merits of preferential
20 proportional electoral systems, i.e. the Single Transferable Vote (STV); and the
21 allocation of cabinet positions by means of sequential proportionality rules, i.e. the
22 d'Hondt mechanism.

23
24 In dealing with these weaknesses, McGarry and O'Leary offer both refinements
25 of, and advancements to, traditional consociational theory. The refinements relate,
26 first, to the technical side of consociational institutions, where the authors
27 recommend STV instead of List-PR as an electoral system as it militates against
28 the proliferation of micro-parties. Second, McGarry and O'Leary elaborate the
29 usefulness of sequential proportionality rules, such as the d'Hondt mechanism or
30 the Sainte-Laguë method, in the allocation of cabinet positions in order to avoid
31 protracted bargaining between parties and to increase parties' incentives to remain
32 part of cross-communal coalitions.

33
34 The advancements to traditional consociational theory offered by the two authors
35 in this introductory chapter, but also elsewhere in their recent writings (e.g.
36 McGarry, 2006; O'Leary, 2005), are a significant step forward in that they address
37 both long-standing criticisms of consociationalism and a gap between consocia-
38 tional theory and conflict resolution practice. McGarry's and O'Leary's obser-
39 vations on external actors bring consociational theory in line with an established
40 debate in international relations on the role of third parties in conflict resolution
41 (see for example contributions in Carment and Schnabel, 2003; Diehl and
42 Lepgold, 2003; Otunnu and Doyle, 1998; Pugh and Singh Sidhu, 2003; Thakur
43 and Schnabel, 2001; Walter and Snyder, 1999). Equally importantly, their
44 discussion of the provisions in the 1998 Agreement that go beyond domestic
45 institutions and address the specific 'Irish dimension' of the Northern Ireland
46 conflict reflects a growing awareness among scholars and practitioners of conflict

1

1 resolution that many ethnic conflicts have causes and consequences beyond the
2 boundaries of the states in which they occur and that for settlements to be durable
3 and stable, these dimensions need addressing as well. In the case of the 1998
4 Agreement for Northern Ireland, McGarry and O'Leary highlight three
5 dimensions: cross-border institutions which formalise cooperation between the
6 Northern Ireland Executive and the Irish government (the so-called North-
7 South Ministerial Council) and renew British-Irish intergovernmental coopera-
8 tion (the British-Irish Intergovernmental Conference); the explicit recognition of
9 the two governments of the right to self-determination of the people in North-
10 ern Ireland and the Republic, i.e. the possibility for them to bring about, in
11 separate referenda, a united Ireland if that is the wish of respective majorities; and
12 new institutions of regional cooperation, incorporating the UK and Irish gov-
13 ernments, and the executive organs of the other two devolved regions in the UK
14 and its three dependent island territories in the Channel and the Irish Sea.

15
16 These arrangements have earlier precedents in the history of conflict settlement
17 in Northern Ireland, but they are not unique to this case alone. Institutions of
18 cross-border cooperation have been utilised as part of comprehensive peace
19 settlements elsewhere as well – for example, in South Tyrol and Bosnia and
20 Herzegovina – and exist, of course, in less conflict-prone situations as part of
21 arrangements between sovereign states and/or sub-state entities – for example, in
22 the EU's Euroregions. The EU itself, at the same time, is one of the most
23 successful cases of regional integration (albeit among 'equal' partners at the state
24 or sub-state level), while the Nordic Council offers arrangements similar to the
25 British-Irish Council in bringing together sovereign states and self-governing
26 territories within them (compare Danspeckgruber, 2005; Nauc ler, 2005).

27
28 As far as the possibility of future status changes are concerned, this, too, is not
29 unique to Northern Ireland or indeed the 1998 Agreement. In recent Northern
30 Ireland history, a so-called border poll took place in 1973 but was near-
31 completely boycotted by nationalists and republicans. There had also been an
32 initial British commitment to hold such polls at ten-year intervals, but this was
33 unceremoniously and quietly abandoned. Farther afield, the people of the
34 Autonomous Republic of Gagauzia in Moldova would have a one-time oppor-
35 tunity to exercise their right to (external) self-determination if Moldova were to
36 join Romania. The Comprehensive Peace Agreement for Sudan offers the people
37 in the south a referendum on independence after six years, while the Bougainville
38 Peace Agreement includes a clause that envisages a referendum on independence
39 to be held in Bougainville after ten to fifteen years. Crucially, in all these situations
40 and including Northern Ireland, the signatory parties have committed to respect-
41 ing the outcome of these referenda.

42
43 A final, and perhaps the most significant, advancement of consociational theory
44 is McGarry and O'Leary's contention that Lijphart's grand coalition requirement
45 is overstated, as 'what makes consociations feasible and work is joint consent
46 across the significant communities, with the emphasis on jointness' (McGarry and

1 O'Leary, 2004, p. 15). On that basis, the authors distinguish 'unanimous con-
2 sociations (grand coalitions),¹ concurrent consociations (in which the executive
3 has majority support in each significant segment) and weak consociations (where
4 the executive may have only a plurality level of support amongst one or more
5 segments)² (McGarry and O'Leary, 2004, p. 15). Jointness, more generally, implies
6 equality and cooperation across blocs and some genuine consent among the
7 relevant mass publics for a democratic consociation and thus excludes just any
8 coalition, as well as co-optation of unrepresentative minority 'leaders'.

9
10 Power sharing, consociational and otherwise and its role in conflict resolution are
11 also central concerns of the other two books considered in this review essay.
12 O'Leary, McGarry and Salih's *The Future of Kurdistan in Iraq* examines various
13 dimensions of this concept in the context of a single case study, while Philip
14 Roeder and Donald Rothchild's volume *Sustainable Peace: Power and Democracy*
15 *after Civil Wars* offers a wider range of case studies from around the world. In
16 addition, both volumes include very valuable conceptual chapters on institutional
17 design on which I will primarily focus in the following.

18
19 The bottom line of Roeder and Rothchild's volume is that power sharing is a
20 useful short-term mechanism to overcome commitment problems that may
21 prevent conflict parties in the immediate aftermath of civil wars to agree to and
22 stick with a peace settlement, but that it is detrimental to peace and stability in the
23 long term. Instead, the editors, and their contributors, recommend power dividing
24 as an alternative strategy to manage conflict in ethnically (or otherwise) diverse
25 societies. Power dividing is seen as 'an overlooked alternative to majoritarian
26 democracy and power sharing' as institutional options in ethnically divided
27 societies (Roeder and Rothchild, 2005, p. 6). Three strategies that are said to be
28 central to power dividing – civil liberties, multiple majorities and checks and
29 balances – in practice result in an allocation of power between government and
30 civil society such that 'strong, enforceable civil liberties ... take many responsi-
31 bilities out of the hands of government', while those that are left there are
32 distributed 'among separate, independent organs that represent alternative, cross-
33 cutting majorities', thus 'balanc[ing] one decisionmaking centre against another
34 so as to check each majority ... [f]or the most important issues that divide ethnic
35 groups, but must be decided by a government common to all ethnic groups'
36 (p. 15).

37
38 The key institutional instruments by which power dividing is meant to be realised
39 are, first of all, extensive human rights bills that are meant to leave 'key decisions
40 to the private sphere and civil society' (p. 15). Second, separation of powers
41 between the branches of government and a range of specialised agencies dealing
42 with specific, and clearly delimited, policy areas are to create multiple and
43 changing majorities, thus 'increas[ing] the likelihood that members of ethnic
44 minorities will be parts of political majorities on some issues and members of any
45 ethnic majority will be members of political minorities on some issues' (p. 17).
46 Third, checks and balances are needed 'to keep each of these decisionmaking

1 centres that represents a specific majority from overreaching its authority'
2 (Roeder and Rothchild, 2005, p. 17). Thus, the power-dividing approach favours
3 presidential over parliamentary systems, bicameral over unicameral legislatures
4 and independent judiciaries with powers of judicial review extending to acts of
5 both legislative and executive branches. As a general rule, power dividing as a
6 strategy to keep the peace in ethnically divided societies requires 'decisions [that]
7 can threaten the stability of the constitutional order, such as amendments to peace
8 settlements' made by 'concurrent approval by multiple organs empowering
9 different majorities' (p. 17).

10
11 Rejecting the classic options of majoritarian democracy, power sharing, protec-
12 torates and partition as long-term solutions that can provide stable democracy
13 after civil wars, Roeder and Rothchild advocate the power-dividing arrange-
14 ments associated with the US constitution: civil liberties, multiple majorities and
15 checks and balances (p. 15). In order to substantiate this assertion, Roeder and
16 Rothchild and their contributors address five different sets of issues in their
17 volume: the suitability of different power-sharing regimes to lead to peace and
18 democracy; their likely success at different stages in the transition from civil war
19 to stable democracy; different factors that condition the success of power-sharing
20 arrangements and institutions; whether alternative options are more likely to lead
21 to stability and lasting peace; and whether a comprehensive strategy of interven-
22 tion with phased institutions appropriate at different stages of the transition from
23 civil war to democracy is possible.

24
25 This is a sound approach and the volume overall benefits from contributors who
26 follow Roeder and Rothchild's lead and examine these questions in considerable
27 theoretical and empirical depth. Thus, Matthew Hoddie and Caroline Hartzell
28 find that '[i]n particular ... both military and territorial power sharing have a
29 positive role to play in fostering post-war peace' and that '[t]hese provisions have
30 the demonstrated capacity to set the stage for the period of transition by
31 enhancing a sense of confidence among former enemies that their interests will
32 not be jeopardised in the context of the postwar state' (p. 103). They also note the
33 importance to think beyond power sharing at the level of central government and
34 to include other mechanisms, such as military, territorial and economic power
35 sharing, all of which prove important in combination rather than in isolation.

36
37 Oddly enough, the following chapter, by David Lake and Donald Rothchild,
38 presents a very different set of findings: instability as an almost certain conse-
39 quence of territorial decentralisation (i.e. territorial power sharing in Hoddie and
40 Hartzell's terms). Lake and Rothchild argue that three strategic problems –
41 governance, the incompleteness of constitutions and transient majorities – make
42 it difficult for institutional arrangements of territorial decentralisation to provide
43 long-term peace and stability (pp. 125–30). The only circumstance in which they
44 are optimistic about territorial decentralisation is 'when there are multiple regions
45 with numerous crosscutting political cleavages and relatively balanced capabilities'
46 (p. 130). Additionally, Lake and Rothchild note that decentralisation is likely not

1 to have unintended negative consequences in the face of 'general fatigue with
2 war, the development of a commitment to resolve disputes through bargaining
3 and reciprocity, and the emergence of respect and good will among the parties'
4 (p. 132). This certainly does not contradict Hoddie and Hartzell's findings; on the
5 contrary it reinforces one important observation of theirs, namely that different
6 (power-sharing) mechanisms work best in combination with each other.

7
8 This emphasis on considering conflict resolution mechanisms as a package rather
9 than individually, unsurprisingly, is also one of the conclusions drawn by Valerie
10 Bunce and Stephen Watts in their chapter on the post-communist states of
11 Eurasia. While they also favour a unitary state approach, they find that '[i]ts success
12 depends on whether it is combined with some other key characteristics, such as
13 guarantees of minority rights and cultural autonomy, and separation of powers
14 and proportionality in electoral systems' (p. 139). This proportionality claim,
15 however, is disputed by Benjamin Reilly, whose examination of nine stable
16 democracies in divided societies finds that only four use PR, and further suggests
17 that '[t]here are no examples of an ethnically plural long-term democracy outside
18 the developed world using PR' (p. 171). As Reilly also emphasises the impact of
19 other factors on what is essentially a question of how well election outcomes
20 reflect the diversity of a given society, such as the geographic distribution of
21 ethnic groups in a country, the question of PR vs. majoritarian/plurality electoral
22 systems seems less relevant anyway. What matters is, again, the right package
23 of institutions, which, as Reilly notes, can in some cases mean a 'combination
24 of plurality elections and federalism' (p. 170).

25
26 Eduardo Alemán and Daniel Treisman examine the role of fiscal politics, especially
27 of fiscal decentralisation and proportionality, in mitigating secessionism. Using
28 four case studies – India, Pakistan, Nigeria and the former Yugoslavia – they find
29 that there is 'meagre support for those tempted to include fiscal decentralisation
30 and proportionality as elements of civil war settlements' (p. 216). This is a
31 somewhat problematic generalisation, as the four cases are highly diverse con-
32 textually, providing examples of pre- and post-civil war violence and rather
33 different structural and institutional settings. Alemán and Treisman acknowledge
34 this earlier, and in line with most other contributors to Roeder and Rothchild's
35 collection, emphasise that the effectiveness of fiscal decentralisation 'will depend
36 on how – and in what context – it is used' (p. 216).

37
38 The four chapters that follow these more broadly conceptual and comparative
39 exercises focus on individual case studies: Lebanon, India, Ethiopia and South
40 Africa. They all have some good things to say about power sharing but remain
41 largely sceptical of its overall and long-term value. Marie-Joëlle Zahar uses
42 Lebanon to make the point that power sharing there depended on external
43 guarantors and as such did bring long periods of peace to the country but in the
44 long run inhibited the country's transition to democracy. Edmond Keller and
45 Lahra Smith in their study of Ethiopia have to deal with a rather different
46 experiment in federalisation, one that largely failed in its implementation because

1 of a lack of state capacity (limited funds, insufficient qualified personnel and
2 material scarcity) and the emergence of new conflicts following federalisation.
3

4 Amit Ahuja and Ashutosh Varshney describe the success of federalism in India as
5 an exception in a more general pattern of failure of power sharing to provide
6 peace and stability in ethnically diverse societies. They focus on a number of
7 factors that facilitate the success of Indian federalism. These are to some extent of
8 a technical and structural nature and relate to the way in which the political
9 process is organised institutionally in India. Yet perhaps most crucially, Ahuja and
10 Varshney emphasise the importance of India being a nation, that is, the country
11 as a whole and its constituent groups having a clear sense of their joint
12 nationhood. The argument then is that where belonging to the nation (and by
13 extension, the state) is by and large not disputed, mechanisms can be found to
14 manage diversity effectively and peacefully. Put more trivially, if people want
15 to live together, they can find ways to do so.
16

17 The final case study, a comparative analysis of South Africa, Northern Ireland and
18 Bosnia and Herzegovina, by Timothy Sisk and Christoph Stefes, brings the
19 volume full circle to the earlier Hoddie and Hartzell chapter and Roeder and
20 Rothchild's introduction. Sisk and Stefes endorse the finding that power sharing
21 is a useful and often desirable and necessary tool to make the transition from war
22 to peace. Specifically, they argue that the South African experience 'may have
23 lessons for other attempts to build flexibility in institutional design and a deeper
24 base of moderation throughout society' (p. 299). Examining Northern Ireland and
25 Bosnia and Herzegovina in light of the South African experience, Sisk and Stefes
26 assert that 'postwar societies need to move beyond the mutual hostage-taking that
27 a guaranteed place at the decisionmaking table implies, the immobilism it inevi-
28 tably creates, and the construction of postwar societies around the fixed and
29 unyielding social boundaries of ethnicity' (p. 317). While they see advantages in
30 'centripetal democratic solutions' they rightly caution that these can succeed 'only
31 if the crosscutting integration in civil society on which they rely can be achieved
32 over time' (p. 317).
33

34 Finally, Roeder and Rothchild offer their conclusions and policy re-
35 commendations. This 'nation-state stewardship' seeks to limit 'power sharing to
36 two tactical roles in the initiation phase', i.e. the early period in the transition
37 from civil war to peace. These two roles, according to Roeder and Rothchild, are
38 an 'offer by a majority to reassure minorities about the peace implementation
39 process' and 'a principle of proportionality for one-time, pump-priming deci-
40 sions, such as the initial staffing of new bureaucracies and the armed forces'
41 (p. 320). They also reiterate an earlier point made in their introduction, and in a
42 similar way by Lake and Rothchild in their chapter on territorial decentralisation,
43 namely that for power sharing to work after civil wars, extraordinary, and thus
44 highly unlikely, circumstances need to be in place, primarily a shared national
45 identity and an abundance of resources (p. 323). As a consequence, they find that
46 power sharing is likely to lead to 'institutional instability, the escalation of conflict,

1 and blocked transitions to democracy' (p. 325). They are equally critical of outside
2 intervention, which they claim 'exacerbates many of the dilemmas of power
3 sharing' and, in fact, introduces additional problems in itself (p. 328).

4
5 Instead of endorsing power sharing beyond the initiation phase of peace and
6 democracy, Roeder and Rothchild offer nine policy recommendations for the
7 strategy of nation state stewardship (pp. 337–45): constituting nation states, create
8 or hold together only those states in which constituent groups share a sense of
9 nationhood and agree to live together; limiting government to minimise con-
10 tentious issues that are decided centrally; delaying intervention until a clear victor
11 emerges; lengthening protectorates to give moderates a chance to emerge; build-
12 ing institutions from the ground up so that local institutions of self-governance
13 can emerge before central ones; phasing withdrawal in accordance with the
14 build-up of local capacity; dividing power between different institutions and
15 arenas such that ethnic stakes in politics are lowered; broadening negotiations for
16 long-term arrangements to include other than just ethnically defined interest
17 groups in the decision-making process; and limiting power sharing in favour of
18 direct rule by the international community.

19
20 The issues raised in Roeder and Rothchild's volume are relatively similar to the
21 discussion about *The Future of Kurdistan in Iraq*, edited by Brendan O'Leary, John
22 McGarry and Khaled Salih. The contributions in this volume, published in 2005,
23 generally reflect the status of and in Iraq prior to the constitutional referendum
24 of 2005 and are drawn from papers given at two conferences before and after the
25 war. Overtaken by events in some of the technical detail, the volume as a whole
26 has very important insights to offer into today's Iraq and presents a significant
27 contribution to the wider debate on institutional design in divided societies. This
28 is reflected well in the book's structure, which, following an introduction to the
29 geopolitical and other realities of the Kurdish nation and its different settlement
30 areas, comprises four chapters on 'federative possibilities', four on 'legacies of the
31 past' and three on 'immediate issues', as well as a postscript by O'Leary, and two
32 appendices with the Kurdish constitutional proposal and the transitional admin-
33 istrative law of Iraq. In accordance with the purpose of this review, I shall focus
34 on those chapters that deal primarily with institutional design.

35
36 Brendan O'Leary examines at length the provisions of the 2003 transitional
37 administrative law for Iraq, and proposes that long-term constitutional arrange-
38 ments for a federal, democratic and pluralistic Iraq be implemented through
39 'power-sharing within a "pluralist federation" for Iraq and "federacy" arrange-
40 ments for Kurdistan' (O'Leary *et al.*, 2005, p. 48). This is manifest in the emphasis
41 placed on the importance of consensual decision-making in the federal govern-
42 ment, the empowerment of regions as holders of real and autonomous compe-
43 tences *vis-à-vis* the centre and the importance of recognising different identities in
44 a new Iraq.

45
46 Contrary to arguments advanced by many critics of pluri-national federa-
47 tions, O'Leary notes that '[t]here are major enduring pluri-national federal

1 democracies, most notably Canada, Switzerland, and India' and suggests that new
2 ones might be emerging, including 'Belgium, Spain, Indonesia, Nigeria and South
3 Africa' (p. 70). Drawing on both successful and failed pluri-national federations,
4 O'Leary also offers a list of factors that account for success or failure. Success
5 criteria include the voluntary and democratic nature of the federation, the
6 recognition of constituent nations and their enjoying either territorial and/or
7 non-territorial self-governance, consensual decision-making at the centre, equi-
8 table management of resource conflicts and promotion of economic develop-
9 ment, and the absence of spoilers in the neighbourhood.

10
11 Focusing then on the consociational requirements in a future Iraqi pluri-national
12 federation, O'Leary discusses in some detail proportional electoral systems, lan-
13 guage use and veto rights before outlining what he considers the only feasible
14 solution: federation for Iraq and federacy for Kurdistan, accompanied by appro-
15 priate power-sharing arrangements at the central and regional levels. While not
16 being overly optimistic for even that solution to bring peace, democracy and
17 prosperity to Iraq, 'the real alternatives to a genuine pluralist federation for Iraq
18 and federacy for Kurdistan are either continuing occupation or an implosion,
19 with secessions accompanied by interventions from neighbouring states' (p. 82).
20 Unfortunately, at the time of writing this review essay, this seems to be the
21 direction into which Iraq is headed.

22
23 O'Leary's proposals for Iraq's future constitutional structures are well comple-
24 mented by John McGarry's analysis of the relevance of the Canadian federal
25 experience. Rejecting US-style federalism, he advocates 'a single federal unit
26 including most Kurds and in which Kurds form a strong majority' (p. 95) and
27 substantive and wide-ranging assignment of powers to self-governing entities,
28 including some competences in the area of foreign policy and defence
29 (pp. 98–101). Engaging explicitly with the idea of power dividing, McGarry
30 argues that power-dividing mechanisms would not be sufficient to ensure stability
31 in Iraq, but rather that they need to be complemented by more formal and
32 guaranteed power-sharing mechanisms that make shared government at the
33 centre a desirable reality, and one that ties self-governing entities to the centre
34 without encroaching on their powers. In this view, the failure of pluri-national
35 federations is not caused by too much power of *self-government*, but by their
36 insufficient involvement in structures of *shared government* (p. 101).

37
38 Finally, McGarry (pp. 108–10) focuses on the need for common and enforceable
39 human rights standards across Iraq. This could take the shape of regional bills of
40 rights alongside federation-wide rights giving federal institutions the right to
41 intervene in federal entities if they are seen to infringe constitutional and other
42 state-wide human rights provisions, but, bearing the Quebec experience in mind,
43 argues that 'this should be done consistently with the rights of Kurds, as a distinct
44 national community, to exercise self-government and protect Kurdish culture
45 within the Kurdish region' (p. 110).

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

11
12 The mere existence of this institutional bargain, however, does not say much
13 about the probability of its endurance. Looking at the situation in Iraq at the end
14 of 2006, institutions seem to matter little amid the increasing violence and talk of
15 withdrawal by US and UK government officials. To the credit of the editors of
16 *The Future of Kurdistan in Iraq*, not only are they cautious about how far the
17 likelihood of the constitutional prescription goes to bring peace, democracy and
18 prosperity to Iraq, but they also included contributions that are generally more
19 pessimistic about the stability of peace in the Kurdish region (Gareth Stansfield),
20 the ability of any constitution to hold Iraq together as a state (Peter W. Galbraith)
21 and the stamina of the US-led coalition to stay the course (Karin von Hippel).

22
23 Leaving aside the specific empirical detail of Iraq or any other case discussed in
24 the three volumes under consideration here, there are important insights on offer
25 for conflict resolution more generally. From the perspective of conflict resolution
26 in divided societies, institutional design needs to address a number of issues. These
27 include: (1) the composition and powers of the executive, legislative and judicial
28 branches of government and the relationship between them; (2) the structure and
29 organisation of the state as a whole; (3) the relationship between individual
30 citizens, identity groups and the state.

31
32 The key aspects of institutional design in the first area relate, first, to the nature
33 of the government system, i.e. whether it is a parliamentary, presidential or
34 semi-presidential system. A second dimension is the issue of whether executive
35 power sharing is mandatory, and if so, what is the extent of prescribed
36 inclusiveness. Inclusiveness, at the same time, is also an important feature of
37 legislative design and is primarily realised through the choice of an electoral
38 system. Power-sharing features and inclusiveness may also extend into the judicial
39 branch, primarily in relation to provisions for the appointment of judges and
40 prosecutors. A final issue in this regard is the overall relationship between the three
41 institutions of government, that is, the degree of separation of powers between
42 them. While this partially relates to the choice of government system, it is also
43 about the degree of independence of the judicial branch and its powers of
44 legislative and executive oversight. Institutional design thus not only prescribes
45 certain outcomes in relation to the composition of the executive, legislative and

1 judicial branches of government and the structure and organisation of the state as
2 a whole but also entrenches them in different ways from hard international law
3 to domestic legislation.
4

5 The most important institutional design challenge in relation to the structure and
6 organisation of the state as a whole has to do with the territorial organisation of
7 the state. While the principal choice is generally between unitary and federal
8 systems, there is a great deal of variation within these two main categories, and
9 there are a number of hybrid forms as well. The most important institutional
10 design decision is about the number of layers of authority with substantive
11 decision-making competences and the extent of these competences. Several
12 further decisions follow from this. The first one relates to the structural and
13 functional symmetry of the political-territorial organisation of the overall state. At
14 one end of the spectrum, a state may be organised territorially in a completely
15 symmetric fashion with all territorial entities enjoying the exact same degree of
16 functional competences, exercising them through an identical set of local political
17 institutions. However, the nature of institutional design in divided societies may
18 necessitate a different approach. Thus, even where there is structural symmetry,
19 functionally speaking the competences enjoyed by different self-governing enti-
20 ties may differ, and/or they may exercise them through different sets of political
21 institutions. For example, where territorial sub-state entities comprise ethnic
22 groups distinct from that of the majority population, they may be granted
23 additional competences to address the particular needs of their communities. In
24 cases in which these sub-state entities are ethnically heterogeneous, executive
25 power sharing, reflecting local ethnic and political demographics, might be an
26 additional necessary feature of conflict resolution.
27

28 A second element of institutional design as far as the structure and organisation
29 of the state as a whole are concerned relates to coordination mechanisms,
30 including dispute resolution arrangements, between different layers of author-
31 ity. This is primarily related to the different types of such mechanisms
32 (e.g. co-optation, joint committees, judicial review) and their leverage (consulta-
33 tive vs. legally binding).
34

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

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

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

17 These theoretical divisions to one side, it is also important to consider how
18 accurately the two theories reflect conflict resolution practice. One of the most
19 striking features of conflict resolution practice over the last decade and a half, as
20 well as prior to that, is that the overwhelming majority of settlements involve a
21 form of territorial self-governance for an aggrieved minority (or minorities).
22 Especially if one considers not only post-civil war cases, there is a large number
23 of such settlements that provide evidence for this trend in North America
24 (Canada), Central and South America (Panama, Colombia, Mexico, Ecuador
25 and Nicaragua), Africa (Sudan, Zanzibar),³ Asia (India, Indonesia, Iraq, Papua
26 New Guinea and Philippines) and Europe (Belgium, Bosnia and Herzegovina,
27 Macedonia, Moldova, Russia, Serbia and Montenegro,⁴ Ukraine and United
28 Kingdom).⁵ In addition, proposals for territorial self-governance regimes also
29 figure prominently in proposed peace agreements, including in the Annan Plan
30 for Cyprus, the Georgian president's peace initiative for South Ossetia, and Sri
31 Lanka. Thus in virtually every conflict situation involving self-determination
32 claims by territorially relatively concentrated identity groups, at least proposals for
33 territorial self-governance have been made. In many of them, these proposals have
34 been implemented.

35 This widespread use of territorial self-governance regimes in the resolution of
36 (ethnic) self-determination conflicts around the globe reflects the assumption that
37 such regimes can contribute to local, national, regional and international stability.
38 In ethnically, linguistically and/or religiously heterogeneous societies in which
39 corresponding group identities have formed and become salient, the degree of
40 self-governance enjoyed by the different segments of society is often seen as more
41 or less directly proportional to the level of acceptance of an overall institutional
42 framework within which these different segments come together. Self-
43 governance regimes are thus also meant to provide institutional solutions that
44
45
46

1 allow the different segments of diverse societies to realise their aspirations for
2 self-determination while simultaneously preserving the overall social and terri-
3 torial integrity of existing states. In doing so, self-governance regimes above all
4 offer mechanisms for conflict parties to settle their disputes by peaceful means.
5 Yet, territorial self-governance on its own is often insufficient to offer viable
6 solutions to self-determination conflicts; and this is why normally a range of
7 further conflict resolution mechanisms are required to ensure that an overall stable
8 and durable democratic settlement can be achieved. This has been increasingly
9 understood by practitioners of conflict resolution and has led to an emerging
10 practice of conflict settlement that I refer to as 'complex power sharing'.⁶
11

12 Complex power sharing, in the way I define it, refers to a practice of conflict
13 settlement that has a form of self-governance regime at its heart, but whose
14 overall institutional design includes a range of further mechanisms for the accom-
15 modation of ethnic diversity in divided societies, including those recommended
16 by advocates of consociationalism, such as McGarry and O'Leary, and power
17 dividing, such as Roeder and Rothchild, as well as integrationism, such as
18 Horowitz, Reilly (2001), Sisk (1996) and Wimmer (2003). Complex power
19 sharing is thus the result of the implementation of a self-governance regime
20 whose success as a conflict settlement device requires a relatively complex
21 institutional structure that cannot be reduced to autonomy/(ethno-)federalism,
22 (traditional) power sharing or power dividing.
23

24 In their determined rejection of power sharing as a long-term mechanism for
25 conflict resolution (both in its consociational variant and in the form of territorial
26 self-governance), Roeder and Rothchild are clearly at odds with the predominant
27 trend of conflict resolution practice. This does not say anything about the practical
28 validity of their theory of power dividing nor does it automatically make power
29 sharing the only valid solution. Moreover, power-sharing solutions as advocated
30 by McGarry and O'Leary *in practice* incorporate many of the sensible recommen-
31 dations that Roeder and Rothchild make about separation of powers, and the
32 provision and enforcement of human and minority rights standards. To be sure,
33 these are not concepts that are alien to or incompatible with consociational
34 theory and practice, but they are not primarily associated with it either. On the
35 other hand, complex power sharing reflects in practice what the editors and
36 contributors to all three volumes implicitly recognise: there is no single mecha-
37 nism that can resolve ethnic conflict *per se*, but a range of mechanisms beyond the
38 core prescriptions of each theory are necessary for peace and democracy to
39 prevail over violence.
40

41 The concrete cases examined in these three volumes are also predominantly cases
42 in which territorial self-governance is at the heart of any actual or possible
43 solution. McGarry and O'Leary deal with Northern Ireland and Iraq; the North-
44 ern Irish consociation as established in the 1998 Agreement and revised by the St
45 Andrews Agreement of 2006 is only possible as a result of establishing territorial
46 self-governance; territorial self-governance for the Kurds is the *sine qua non* of

1 their engagement with Iraq. Contributions in Roeder and Rothchild's volume,
2 even though they are in the majority more critical of territorial self-governance,
3 cannot but acknowledge that this mechanism is embraced in negotiated settle-
4 ments of conflicts.

5
6 The kind of liberal consociationalism that McGarry and O'Leary propose thus
7 seems to be more open to such an inclusive approach to conflict settlement that
8 is not confined within its own normative-theoretical preferences and that
9 can (and needs to) complement its primary recommendations with elements of
10 power dividing (as well as integrationist power sharing). Within a liberal con-
11 sociational framework, there is room for a range of power-dividing strategies,
12 including a strong role for judicial entrenchment and enforcement mechanisms,
13 and universally applicable and enforceable human rights legislation. Liberal
14 consociationalism is also open to a vertical division of power on the basis of
15 non-ascriptive, i.e. non-ethnic criteria, but in contrast to power dividing (and
16 integrative power sharing) does not rule it out either should self-determined
17 entities on that basis emerge and desire territorial or corporate self-governance.
18

19
20 A final question can be posed: is complex power sharing a feasible alternative to
21 the purist implementation of existing theories, or is it the result of misguided and
22 ill-informed diplomats and policy-makers making choices of short-term conven-
23 nience rather than long-term prudence? There is little point in making immodest
24 claims at this stage about the feasibility of complex power sharing as a conflict
25 resolution strategy equal, if not superior to that which existing theories prescribe.
26 While complex power-sharing practice *may* eventually lead to a synthesis of
27 existing theories in a complex power-sharing framework, there is as yet not
28 enough real-world evidence about how stable such regimes can be under varying
29 conditions.⁷ Some of them have proven relatively stable over time (i.e. over ten
30 years): Belgium, Brussels, Bosnia and Herzegovina, Crimea and South Tyrol.
31 Northern Ireland has, despite incomplete implementation, achieved a very sig-
32 nificant reduction of violence and the continued peaceful and political engage-
33 ment of the conflict parties in an effort to find a permanent and acceptable
34 solution for all. Others, including Bougainville, South Sudan and Macedonia are
35 too short-lived to provide reliable data about their long-term stability. Mindanao
36 has only achieved partial success in bringing peace to a troubled region of the
37 Philippines. In all these cases, however, further analysis is required to determine
38 causal relations between institutional design and the durability of peace. Having
39 said that, neither is power sharing generally doomed to collapse in renewed
40 violence as Roeder and Rothchild's power-dividing theory implies (nor is
41 consociationalism practically dangerous or morally unjustifiable as some of its
42 integrationist critics tend to suggest).

43
44 In order to move beyond the rigid theoretical divisions between consociational
45 (and integrationist) power sharing and power dividing, that is for complex power
46 sharing to develop into a theory of its own, further research is necessary. Complex
power sharing describes a particular phenomenon of conflict resolution practice

1 in adequate detail, but more work needs to be done to increase its predictive
2 capabilities (i.e. when are complex power-sharing regimes likely to emerge?) and
3 its explanatory value (i.e. when and why does it succeed?). Only then will it be
4 possible to make sure that complex power sharing does not emerge accidentally
5 in practice as a patchwork of different conflict resolution mechanisms cobbled
6 together to accommodate a wide range of diverse (and most likely, incompatible)
7 interests, but to provide a framework within which stable, lasting and ultimately
8 successful conflict settlements can be designed.

9
10 (*Accepted*: 21 December 2006)

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15 **Notes**

16
17 1 O'Leary later refers to this also as 'complete consociations'.

18 2 The subsequent assertion, also repeated in other writings, that '[c]onsociations become undemocratic when elites
19 govern with factional or lower levels of support within their segments' (McGarry and O'Leary, 2004, p. 15) is less
20 convincing in my view. Assuming that 'support' means electoral support, a consociation is democratic or not if its
21 executive emerges in free and fair elections, not if it fulfils certain numerical tests. Implicitly, what seems to be at
22 stake is less the democratic credentials of the arrangement, but its consociational nature, especially the criterion of
23 jointness. By extension, such an arrangement might also prove less stable compared to one in which an executive
24 can rely on broader levels of support. Insisting that plurality support is a minimum requirement for democratic
25 consociations is also empirically not without difficulties. In South Tyrol, for example, the only formal requirement
26 for the provincial executive is that it must reflect the numerical strength of the linguistic groups as represented in
27 the Provincial Parliament. This means that an Italian party with less than plurality support can become a coalition
28 partner of a German party as long as it sends sufficient numbers of ministers into the provincial cabinet that reflect
29 the total numerical strength of all Italian parties in the provincial parliament and provided that this government
30 commands the required majority in parliament.

31 3 Proposals for decentralisation/federalisation also exist in Ethiopia, Nigeria and the Democratic Republic of Congo,
32 but in all three cases lack serious implementation efforts. I am grateful to Sandra Joireman and Donald Rothchild
33 for providing me with this information.

34 4 The 2003 constitution of the Union of Serbia and Montenegro provided for a bi-national federation between the
35 two entities and included an option for Montenegrin independence after three years if at least 55 per cent of people
36 participating in a referendum would opt for it. The referendum was held on 21 May 2006, and Montenegro declared
37 its independence on 3 June after the country's referendum commission confirmed as official the preliminary result
38 which had already been recognised by all five permanent members of the UN Security Council on 23 May.

39 5 This is not meant to be a comprehensive list of cases. For an analysis of some examples and general trends in the
40 spread of territorial self-governance regimes as part of conflict settlements, see contributions in Weller and Wolff
41 (2005).

42 6 I borrow the term 'complex power sharing' from a research project funded by the Carnegie Corporation of New
43 York ('Resolving Self-determination Disputes Through Complex Power Sharing Arrangements'). In this project,
44 complex power-sharing regimes are distinguished 'in that they no longer depend solely on consociational theory,
45 or solely upon integrative theory', involve international actors that 'are often key in designing, or bringing
46 experience to bear upon, the structure of the eventual agreement, or its implementation' and 'consider a far broader
47 range of issues ... and ... address structural issues as diverse as economic management, civil-military relations and
48 human and minority rights, and ... do so at many different levels of government', thus recognising 'that at different
49 levels of government, different strategies may be more, or less, applicable, and consequently more, or less, successful,
50 in engendering peace and stability' (Kettley *et al.*, 2001, pp. 4–5). O'Leary (2005, pp. 34–5) uses the term 'complex
51 consociation' in a similar manner.

52 7 For some initial comparative analysis of complex power sharing in practice see Wolff (2004; forthcoming). See
53 also individual case studies published on the website of 'The Cambridge Carnegie Project on Resolving
54 Self-Determination Disputes Using Complex Power-Sharing' at <http://www.intstudies.cam.ac.uk/centre/cps/>.

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