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Avoiding Unwieldy and Ethnocratic Government

A RESPONSE TO ‘THE DAYTON PEACE AGREEMENT
IN BOSNIA AND HERZEGOVINA AND LESSONS FOR
THE DESIGN OF POLITICAL INSTITUTIONS FOR A
UNITED IRELAND’ BY TAJMA KAPIC

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Brexit and its associated challenges have served to reinvigorate debate about possible constitutional change on the island of Ireland. How a united Ireland that may result from such constitutional change would be structured is a vital part of this discussion. Despite the many differences, Bosnia and Herzegovina’s (BiH) governance structure may offer some guidance. BiH is another

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well-known example of a divided society in Europe—with a power-sharing system based on some of the same understandings that underpinned the Good Friday Agreement (GFA). Tajma Kapic's article explores what these lessons may be, providing a detailed overview of some of the most serious weaknesses in BiH's post-war institutional design. Among the important points she makes, the two most striking are the negative long-term impacts of structuring representation around pre-defined ethnic or ethno-national identities and the difficulties associated with bloated and overly complex multi-level government. My brief response to her interesting article supports her assessment. It concisely addresses the issue of the potential territorial arrangements before moving on to consider the need to avoid the adoption of rigid and binary ideas of inclusion based exclusively on ethno-national identity.

The complex multi-level governance system in BiH includes extensive political institutions at the state level, entity level and canton level. The vast political and state bureaucracy is, as Kapic found in her research, 'an enormous drain of dwindling resources that hinders the economic development of Bosnia and Herzegovina'. A motivation behind the creation of this structure was the realisation of territorial autonomy for different ethno-national groups. As Kapic further noted, leaders such as Milorad Dodik have used this territorial self-government to impede the development of central state capacity and even to engage in secessionist activity. Given the centralised nature of Irish governance, a complex multi-level system is highly unlikely to be adopted in a united Ireland. In fact, recent research seems to suggest that in a united Ireland, those on both sides of the current border would prefer the Stormont Assembly and Executive to be shut down.¹ This suggests that a relatively simple unitary model for the executive and legislature could be adopted. Nevertheless, the BiH experience underlines the need to avoid such territorial measures. The closure of Stormont could contribute to a more meaningful inclusion of unionists into a Dublin parliament and government. Furthermore, one would need to consider how to integrate very different systems in terms of the provision of services such as health and education to avoid costly duplication.

¹ John Garry, Brendan O'Leary, John Coakley, James Pow & Lisa Whitten, 'Public attitudes to different possible models of a United Ireland: evidence from a citizens' assembly in Northern Ireland', *Irish Political Studies*, 35:3 (2020), 422-450. Garry, Gillespie, and O'Leary 'What people in the Republic actually think about Irish unification', *The Irish Times*, 23 Sept 2021. <https://www.irishtimes.com/opinion/what-people-in-the-republic-actually-think-about-irish-unification-1.4681111>

Kapic argues that ‘the experience of Bosnia and Herzegovina suggests that rigid definitions of communal groups should be avoided in a united Ireland’. This is undoubtedly good advice, and perhaps the most important lesson to be drawn from the Bosnian experience. The adoption of such rigid definitions and associated institutional design has led to government paralysis and ongoing ethnic divisions in BiH. The adoption of rigid corporate consociational provisions in the Dayton Peace Agreement was somewhat understandable given the priority to end the extreme violence. However, the adoption of similar measures in the context of designing political institutions for a united Ireland would be indefensible. The privileging and reification of ethnic or ethno-national divisions as they stand at the moment a peace agreement is reached is one of the most serious criticisms of power-sharing as a conflict resolution device. In BiH these provisions, which govern how representation in political institutions is structured, have had serious negative effects. Kapic shows that, in addition to government paralysis, 25 years after the signing of the Dayton Agreement the fears of power-sharing critics have been realised with ‘the continuous deepening of ethnic cleavages and a sharp rise in openly expressed nationalist intolerance’. Kapic’s analysis also demonstrates how the adoption of rigid ethno-national categories around which politics is structured excludes those who do not identify with these labels. Kapic draws our attention not only to the much-cited Sejdic–Finci case from 2009 but also to the Zornic case from 2014. The European Court of Human Rights’ decisions in both these cases show how far corporate consociationalism is from contemporary understandings of inclusion and human rights.

Kapic argues that ‘Strong protections of cultural identity could be enshrined in law and in a constitution in a manner that includes a diverse range of identities on a non-exclusive basis.’ The idea that inclusion provisions could reflect a wider range of identities has many advantages. Primary among them, in my opinion, is the broadening of the concept of inclusion beyond an ethno-national binary. A united Ireland, and the creation of new or radically reformed political institutions, presents an opportunity to recognise the diversity of identities on the island and to address structural exclusion. Coupled with the fact that both the Covid-19 pandemic and the climate crisis highlight a profound need for political and social reform, the potential to create a genuinely new Ireland is compelling. Yet such an exercise would undoubtedly be complex and contentious and requires political ambition on a scale that has not yet been demonstrated.