

## Bosnia and Herzegovina's eroding Dayton constitutional order

### Abstract

*On the 25th anniversary of the Dayton Agreement, this article assesses the current state of Euro-Atlantic integration in Bosnia and Herzegovina. Its starting point is that Dayton represented not a breach but a continuation of the politics which destroyed Yugoslavia and that salvaging the country's democratic potential requires a paradigmatic break from virtually all its socio-political practices and institutions. In these contexts, the article's central focus on the 'Bosnian Spring' which took place right across the country in (and in the run-up to) 2014 provides a salutary reminder of the ability of ordinary people to come together to demand socio-economic justice and, in doing so, to step out of the ethno-nationalist rigidities imposed by Dayton. While those protests ran out of steam, such events are the only ones by which elites can historically be persuaded to concede democratic ground. Dismantling the ethno-nationalist narrative remains the challenge and, when it becomes clear that change will not come from within the system, it becomes the task of ordinary citizens to create democratic institutions that are worth the label.*

**Keywords:** Dayton Agreement, Bosnia and Herzegovina, constitutional order, civil society, democracy, citizens' assemblies

### Introduction

As Bosnia and Herzegovina's (BiH) internationally-brokered Dayton constitutional order inches towards the third decade of its existence, soberly assessing the Euro-Atlantic project in the country is imperative. Taking stock of the apparently stalled democratisation of BiH within the context of its attempt to integrate into the EU and NATO is only possible, however, if we recognise Dayton not as a break but as a continuation of the same politics that destroyed the Yugoslav federation and which Dayton was meant to replace. Especially prominent in this trend is a peculiar and elastic form of nationalist-authoritarianism that has survived and even deepened its hold on the country, despite nearly a quarter of a century of international state-building efforts. Thus salvaging the potential for democratic politics in BiH today requires more than merely another reboot; it requires a paradigmatic break with virtually all dominant socio-political practices and institutions in the country. The only force capable of delivering such a, realistically, revolutionary transformation in BiH – even as a piecemeal, multi-pronged and often contentious effort – is the country's nascent civil society. And even its transformative capacities are, in the actually existing security order of the region, dependent on the support and protection of the (erst-

while) liberal democratic international community. Which is to say, in theorising the role of civil society in the democratic transformation of BiH one cannot ignore or reject the necessary role of outside actors; both those who could buttress BiH's sovereignty and territorial integrity (i.e. the US and the EU) and those who have historically imperilled it (i.e. Serbia and Croatia).

Civil society in BiH is fractured and hobbled by many of the same factors that have stunted the democratic experience, as such, in the country. After nearly two decades of progressive institutionalisation and professionalisation, the result of its predominantly donor-driven model of organisation and subsistence, BiH's civil society experienced a profound schism in 2014. The violent protests which rocked the country in the spring of that year, the so-called 'Bosnian Spring' (Mujanović 2014a), revealed the existence of a vast and politically marginalised underclass which was as repulsed by the country's established political regime as with the professional NGO sector which it deemed to be complicit in the former's malign administration (Arsenijević 2014). Whether or not this perception of the latter as politically subservient or opportunistic was fair, the reality was that the *ad hoc* citizens' assemblies, the plenums, which emerged in the wake of the protests actively sought to reject and distance themselves from the established NGO community. And, for their part, large segments of the professional NGO community felt the events between February and April 2014 to be no more than an expression of almost juvenile rage, an illustration of citizens' widespread political immaturity and in no way a moment of actual political significance. These cleavages remain and, arguably, have only widened in the six years since the events in 2014.

This article proceeds on the basis of two analytical axioms: BiH is a 'fractured authoritarian' state (Mujanović 2017) in need of a kind of holistic social transformation that only a genuine collective effort on the part of civil society and (what few) reform-oriented institutional actors exist in the country can provide. But owing both to the country's exceedingly complex contemporary political arrangements and its historically compounding experiences with generations of authoritarian regimes – elsewhere referred to as a form of 'elastic authoritarianism' (Mujanović 2018: 2) – Bosnian civil society is still largely stunted, mired in provincial factionalism and, for the most part, incapable of advancing an actual programme of political action. Split between a professional, and internationally financed, NGO sector on the one hand and a marginalised and disenfranchised grassroots on the other, BiH's civil society is a microcosm of the country's broader post-war challenges: the *de jure* appearances of ongoing democratisation and the *de facto* realities of profound democratic backsliding amid seething social tensions between the country's fistful of privileged, sectarian elites and the impoverished majority.

And yet the paradigmatic experience represented by the 2014 protests gave tantalising vignettes of what else was, and remains, possible: Bosnian civil society is capable of challenging and dismantling the entrenched post-Dayton elite and, moreover, of creating genuine, popular alternative modes of social organising. To realise its true democratic potential, however, civil society and its constitutive representatives require a thorough analysis of both the foundations and contradictions of the broader Bosnian political experience. This article asks how such an embryonic, frac-

tured, civil society can become a genuine social movement for change and whether, in the final analysis, the international factor in BiH aids or hinders its potential as a transformative entity in society. Methodologically informed by democratic theories of 'disruptive' civic activism as fundamental to the ideal of a truly democratic *polis*, this article draws on the example of three episodes of protest in BiH since 2012 to explore the precarity of the existing regime in BiH, the abilities of relatively small but organised groups of citizens to upend the *status quo* and the political necessity of such acts for the country's genuine democratisation.

### Fractured authoritarianism

The contemporary constitutional order in BiH is a highly fragmented, ethnically-marked consociational regime, or what has elsewhere been referred to as a 'complex federalist'<sup>1</sup> system with robust ethnic power-sharing provisions (Banović *et al.* 2013: 23). Within all relevant public institutions, the country's three 'constitutive peoples' (Bosniaks, Serbs and Croats) enjoy political primacy and are appointed, selected and elected according to their declared ethno-national identity.

The state is composed of two autonomous entities plus one special district, respectively: the Federation of Bosnia-Herzegovina (FBiH); the Republika Srpska (RS); and the District of Brčko. The FBiH is further sub-divided into ten cantons which, with the exception of two ethnically mixed units, have either an explicitly Bosniak or Croat majority population (Banović *et al.* 2013: 52). The RS comprises 49 per cent of the state's territory and is home to the majority of the country's ethnic Serbs. The city of Brčko, sitting in the northeast of the country, strategically splits the RS into two sections and is its own self-administered unit (though technically a part of both the FBiH and the RS), with an ethnically mixed population.

The state government in Sarajevo is composed of a bicameral legislature, the Council of Ministers (theoretically akin to the Prime Minister's office and cabinet in the Westminster system; that is, an executive within the legislature) (Banović *et al.* 2013: 42) and a three-member presidency. All of the institutions at state, entity and cantonal level are staffed through the use of formal and informal ethnic keys and quotas.

Atop the institutional pyramid sits the Office of the High Representative (OHR), an internationally-appointed post, tasked with monitoring the 'peace implementation process'. The High Representative has wide-ranging powers that include the ability to create and overturn laws and sack elected and non-elected officials which are known as the 'Bonn Powers' (Merdzanovic 2015). The wide jurisdiction of the OHR has been controversial both within BiH and in the academic literature (Knaus and Martin 2003). Nevertheless, the OHR remains an integral part of the BiH constitutional system, albeit significantly less involved in day-to-day politics after 2006 and, in particular, since the arrival in 2009 of the current High Representative, the Austrian national Valentine Inzko. This administrative retreat is primarily the result of shifting international priorities rather than domestic changes. Since the OHR essentially depends on the consensus and support of the international community to act,

1 Although BiH is not, constitutionally or technically speaking, a federal regime.

embodied by the Peace Implementation Council (PIC), BiH's declining geopolitical priority and the fragmentation of international consensus has meant a diminishing of the OHR's capacity to act (Bassuener *et al.* 2014).

On the whole, as Florian Bieber notes, the 'significant role of the international community' in the country's administration has made BiH 'de facto a protectorate that is characterized by a loose federation [sic] with a weak central government.' Moreover, with:

[fourteen] constitutions and governments with legislative powers, the political system of [BiH] is both inherently complex and asymmetrical. Ultimately, this unusually convoluted structure of governance has rendered the country unstable and dysfunctional. (Bieber 2006: 40)

Although the notion of BiH as a 'protectorate' is dubious, given the now long-standing disinterest of the international community in the deteriorating security conditions in the country, contemporary BiH is an example of what happens when competing state projects exist under the rubric of one constitutional order, one which perpetuates rather than eliminates sectarian strife, and a regime in which elites nevertheless work collectively to suppress the democratic aspirations of the citizens. In other words, in place of one authoritarian order as in the communist period, or even six or eight distinct republican regimes as it was after 1974, today in BiH alone there exist more than a dozen distinct legal and political jurisdictions. In even the most prosperous and democratic states, this level of surplus bureaucracy would fundamentally impede rational governance. In a post-authoritarian and post-conflict society like BiH, however, the proliferation of these administrative layers has served as an incubator for the preservation of the most destructive and corrosive elements of past regimes. In this respect, the territorial and political fragmentation of BiH appears clearly to have cemented the dominance of the country's pre-war political oligarchy, with few changes in its roster since the late Yugoslav period (Mujanović 2018: 47-96).

Moreover, not only has this aspect of the Dayton constitutional order significantly complicated effective and transparent governance it has also made the airing of grievances – whether in the street or at the ballot box – virtually impossible. It is rarely clear who citizens should blame for the widespread inequities and incompetence they encounter in their society. In the FBiH, for instance, education and justice policy alone are 'implemented by one federation ministry, as well as ten cantonal ministries' (Banović *et al.* 2013: 54). However, even in the event that a responsible party can be identified, such a significant portion of the population is employed in the public sector, in which continued employment depends on the patronage of the ruling parties, that the incentives for change are few. According to one set of figures, every third employed person in BiH works in some sector of the public administration (Zelenika 2014). This therefore means upwards of 180,000 individuals in a country which, around that point, had an unofficial unemployment rate of approxi-

mately 40 per cent (Veselinović 2013).<sup>2</sup> Since government jobs are the highest paid in the country, one may conclude that those employed in the public administration are, in most cases, the primary breadwinners for their immediate and extended families. Those individuals thus have an active interest in preserving their patrons in power, even though these same political oligarchs have economically and socially devastated society as a whole. Despite failing to deliver public goods, complex institutional incentives abound to maintain the current constitutional and political *status quo*.

In this respect, the lack of a coherent constitutional system and the wider corruption and criminality that permeates BiH's political and social life is both the result as well as the product of the broader political economy of the region and its still recent wars. While designed by the US, the Dayton Agreement fundamentally endorsed the local elite's preferred political arrangements, in particular the preferences of the Serb and Croat nationalist extremists who explicitly sought the fragmentation of the Bosnian state during the 1990s (Biserko 2011). As a result, Dayton was only ever an armistice, despite uniquely incorporating a constitution and an overarching vision for the country's democratisation. The internationally-backed agreement, however, did little to dislodge or reform the domestic structural factors that led to the previous state's dissolution. As Eric Gordy notes in addressing the intersections of local and international power within the Dayton regime:

[Contemporary] politics in Bosnia and Herzegovina is characterized by political structures generated by outside actors, ostensibly with the goal of assuring peace and the development of democracy, but in practice maintaining ethnifying [local] monopolies in politics and providing cover for impoverishing neoliberal monopolies in economics (Gordy 2014: 111).

One may quibble as to whether BiH's economic arrangements are truly neoliberal or even capitalist – I argue they are not and that an actual rules-based free-market system would be a significant improvement over the contemporary regime – but the broad contours of Gordy's assessment concerning the role of political and economic power in Bosnian society are astute.

BiH is not in immediate danger of inter- and intra-state conflict – although the odds of both have increased significantly since the onset of the post-Crimean disorder in Europe — but the prospects for social conflict are legion. Hence even from a strictly security standpoint, Dayton's effects have been dubious at best. BiH's contemporary political economy is still characterised by clientelism, endemic corruption and still largely primitive modes of accumulation (Divjak and Pugh). The worst pat-

- 2 The unemployment rate has fallen back since but the ILO still refers to BiH as 'one of the most challenging labour markets in the region', pointing in addition specifically (and on the basis of official data) to low employment and activity rates (35 per cent and 42 per cent, respectively); one in four young people not being in education, employment or training; one of the lowest female employment rates around (27 per cent); and the share of informal employment reaching as high as 30 per cent of total employment. All figures for 2019, accessed on 24 November 2020 at: [https://www.ilo.org/budapest/countries-covered/bosnia-herzegovina/WCMS\\_471903/lang--en/index.htm](https://www.ilo.org/budapest/countries-covered/bosnia-herzegovina/WCMS_471903/lang--en/index.htm).

terns of corruption from the pre-war period have now had added to them the results of various forms of war and post-war profiteering. Post-war political and economic affairs remain dominated by a combination of pre-war political actors and former war lords. Despite a democratic veneer, the primary governance model for virtually all of the major political parties in BiH remains the authoritarian tendencies of the erstwhile League of Communists (Bieber 2006: 41). Or, as the International Crisis Group noted in what is still the most recent report the organisation has published on BiH, it is this dynamic, rather than the ‘ethno-national question’, that defines life in the country:

[An] informal ‘Sextet’ of party leaders in effect controls government and much of the economy. A multi-ethnic coalition persists, election to election, with only minor adjustments. Membership is earned by winning opaque intra-party competitions in which voters have little say... Sextet power is further buttressed by control of hiring, investment and commercial decisions at state-owned firms, a situation that chokes private investment and growth. (ICG 2014: 4)

That Sextet has evolved somewhat since but the fundamental essence of the ICG’s six-years-old analysis remains accurate.

### Negating democracy

The basic contours of BiH’s actually existing politics established, it still bears explicating why this regime has proven so remarkably resilient to reform. After all, contemporary BiH has, broadly, free and fair elections so why have the citizens not elected reformist parties and candidates to dismantle, at least, the most vulgar aspects of Dayton’s stultifying ‘ethnocracy’?

To begin with, the concept of ethnicity is so integral to the Dayton regime that it is virtually impossible to be simply a citizen of BiH. The preamble to the constitution (technically, Annex 4 of the Dayton Peace Agreement) effectively establishes a hierarchy of political rights, listing the state’s inhabitants as: ‘Bosniacs [sic], Croats, and Serbs... (along with Others), and citizens of BiH.’ The ordering is not accidental: the constitutive peoples possess political rights which are not granted either to the Others (that is, various ethnic and national minorities) or to citizens of BiH who identify simply as Bosnians. As Asim Mujkić suggests, from the perspective of democratic consolidation, this constitutional order replaces the ideal of the *polis* with that of the *Ethnopolis*:

The subversive mechanism of Ethnopolitics consists in practice of *presenting ethnos as demos*, where *ethnos* act like *demos* thus ... becoming an imaginary community of belongingness and connection of the kinship as collective subject of the representation, decision-making and law. The function of representation, decision-making and the establishment of legal [frameworks] become discriminatory on [the] basis of kinship. Unlike [the] civic conception [of the] *inclusive* greater participation of [a] greater number [of citizens], Ethnopolitics [is] ...constituted... by means of legal democratic procedure, as *exclusion*; citizens are divided into autochthonous and other, foreign group(s). (Mujkić 2008: 20)

By now, the most famous articulation of this inequality principle concerns the case of Jakob Finci and Dervo Sejdić. In 2009, Finci and Sejdić, of Jewish and Roma ancestry respectively, won a landmark case against the state of BiH at the European Court of Human Rights (ECHR). Finci and Sejdić argued that barring non-constitutive peoples from the state presidency, as well as a host of other institutions, was a flagrant violation of BiH's commitments to various international human rights treaties. The court agreed and ruled that BiH would have to amend its constitution to remove the offending articles (Claridge 2010). Since then, the court has issued three similar decisions which, together with the Sejdić-Finci decision, have rendered the existing Bosnian constitutional framework, from an international perspective, essentially legally untenable (Mujanovic 2017). Despite initial European threats in the run-up to the 2014 elections that, unless reforms were implemented, the elections would not be recognised, the court's decisions remain unimplemented. Also unimplemented were the EU's threats of electoral non-recognition, a fact that remained the case as the country approached the 2020 polls in early November.

This institutionalised practice of legally-sanctioned discrimination and legal non-compliance and incoherence is characteristic of the Dayton constitution. Likewise unimplemented are a host of local court decisions concerning school segregation, primarily in Herzegovina. In Mostar, no local elections were held between 2008 and December 2020 because the respective Bosniak and Croat ruling blocs could not agree on a suitable electoral quota system. The eventual agreement negotiated by the international community in early 2020 allowed for the elections finally to take place but, obviously, without dismantling the city's ethnic order (Behram 2020). Decisions by the BiH Constitutional Court in late 2016 against the official marking of a discriminatory holiday concerning the founding of the RS entity, and a referendum conducted by the local authorities concerning the marking of that holiday, were both ruled unconstitutional yet nevertheless took place. The day has continued to be marked since.

Even among the respective constitutive peoples there are no absolute rights and access to political representation is perennially contingent. The Serb member of the state presidency, for instance, is chosen exclusively from the RS – Serbs in the FBiH, of which there are several thousand, cannot vote for this position. Likewise, Bosniaks and Croats in the RS cannot vote for their respective ethnic representatives on the state presidency. In the Herzegovina-Neretva canton, meanwhile, Serbs are barred from being recognised as a constitutive people by the nationalist Croat Democratic Union (HDZ), even though the practice is flagrantly unconstitutional, and even as the HDZ has successfully argued at the BiH Constitutional Court for changes to the national electoral law on the basis of perceived discriminatory provisions in the existing statutes against the Croat community. This morass of contradictory constitutional and legal norms and practices collectively translates to a *de facto* state of lawlessness.

Unsurprisingly, one of the most charged questions in the country's post-war history has been the actual tabulation and categorisation of the country's citizens. The first post-war census in 2013, and the first since 1991, was, as a result, conducted like an election campaign where respondents were expected to 'certify' their belong-

ing to an ethnic community, almost as if to do so was to allow the scrapping of electoral politics altogether (Cooley and Mujanović 2016). Among the respective nationalist blocs there was a virtual panic after the results of an early trial census were released which revealed that as much 35 per cent of young respondents identified themselves not as one of the constitutive peoples but as ‘Bosnians and Herzegovinians’ (Bieber 2012). In the final census, the total number of ‘non-constitutive’ respondents was less than 4 per cent of the total population but, owing to the extensive political manipulation that took place during and after the actual census, it is difficult to interpret the results as actual ‘evidence’ of the (lack of) anti-nationalist sentiment in the country (Recknagel 2016).

Still, for the nationalists it is a matter of existential survival to spin all such developments and incidents not as proof of growing anti-nationalist sentiment in BiH – or at least the proverbial exhaustion of the Dayton regime’s ethnic quota system – but as evidence of ‘discrimination’ against their respective community. In their preferred narratives, Dayton’s ethnic logic is only flawed in that it is insufficiently rigid and exclusionary. In the end, what the nationalist blocs seem to be after is not merely ‘apartheid cartography’, as David Campbell labelled the post-war BiH system (Campbell 1999) but apartheid *tuto completo*. Even so, such a regime of apartheid is also merely a tool to obtain their true objective: totalising power and control, albeit necessarily fractured among a patchwork of ethnically-constituted fiefdoms. Indeed, the fracturing of the BiH legal apparatus, as previously noted, is in fact an integral part of the strategy of the country’s oligarchs; BiH’s fragmentation ensures the persistence of their authoritarian rule.

Given the pronounced legal vacuum in which BiH exists, internationally and domestically, it is perhaps appropriate that the constitution itself is not legible to the state’s citizens. This is quite literally the case as there is no official translation of the Dayton constitution in the local language(s). Nor has there been any attempt made to remedy this:

[The] Dayton Agreement, including the Constitution of Bosnia and Herzegovina, has never been published in the Official Gazettes of the State and/or the Entities. (Banović 2013: 22)

In 2020, after 25 years, it remains the case that the Dayton Agreement cannot be read in the Bosnian language (and nor in Croatian nor Serbian).

This is not merely an example of government oversight. It is proof of a concerted effort to eject public participation as a whole from the politics of the state and thereby effectively to eject the potential for autonomous, popular, political action from society as such. Indeed, the only way such a policy makes sense is if there is essentially an ideological commitment to exclusion within the BiH political establishment. After all, despite the existence of a robust ‘vital national interest veto’ (Banović 2013: 55), Byzantine administrative levels of checks and balances, and absurdly fractured territorial enclaves, all meant to ‘protect’ the respective ethnic communities from one another, the respective peoples of BiH are uniformly impoverished. Nationalism as a social phenomenon, rather than being the solution, is a constitutive aspect of the exclusionary tendencies of elite politics in the country. Accordingly, the entire convo-

luted system of ethnic representation that defines the Dayton constitutional order exists, above all, to exclude citizens rather than individual ethnic communities from participation in the state's administration. In this respect, Dayton is a fundamentally anti-political constitution and this, rather than its 'constitution within a peace accord' dynamic, is what makes it truly unique. As Mujkić notes, owing to the rigid ethno-national provisions of the Dayton constitution, combined with the kleptocratic tendencies of the country's elites, BiH is a polity in which '[under] the cover of the legitimacy conferred by free and fair elections, citizens as individuals are stripped of any political power' (Mujkić 2007: 113).

Of course, the primary counter to this dreary assessment, and the one preferred by various international observers and administrators in BiH, is that the choice, in the end, is in the hands of BiH's citizens. If they would only vote, *en masse*, for genuinely reformist parties then change would occur. The problem with this logic is that the institutional barriers to reform-oriented parties enacting policy are so high as to make this suggestion essentially moot. A non-nationalist would have to win a landslide of the sort simply unheard of in even the most free, most fair and most functional democratic regimes in order to enact its programme. The nationalists, meanwhile, only have to win a plurality among the already ethnically fragmented, conservative-nationalist electorate to maintain their totalising grip on the levers of power. The Dayton constitution thus empowers the very actors the international community otherwise bemoans as the country's biggest problem.

## Democratic ruptures

### *Protest movements*

BiH's existing constitutional arrangements are not sustainable. The international community's strategic patience is exhausted yet, without this much needed outside assistance, the country's political system simply cannot operate. Above all, however, BiH's existing constitutional arrangements cannot persist because they have politically alienated too many of the country's citizens. While many subsist on the vast clientelistic networks that dominate the country's economy and politics, few are willing to work to preserve these practices to the end. And the end of this regime is far closer than the existing literature would suggest: since 2012, three dramatic protest waves have shown how weak is the state in BiH and how much political change can be accomplished by relatively small, but organised, groups of citizens. Dayton is, in short, an institutionally and politically spent mechanism. New battle lines are being drawn in BiH not between the country's ethnic communities but between the political-economic elites on the one hand and the vast impoverished majority on the other.

In 2011 the BiH Constitutional Court passed a largely technical decision concerning the harmonisation of personal identification documents. The central element of the decision concerned the issuing of the 'Unique Master Citizen Number', better known by the local acronym 'JMBG'. The court insisted on the drafting of a new law and set a final deadline for implementation for February 2013. Representatives from the Serb nationalist SNSD (the Alliance of Independent Social Democrats) demanded that the new law should designate distinct numerical codes for JMBG cards issued in the RS. The Bosniak nationalist SDA (the Party of Democratic Action) and civic-

oriented SDP (the Social Democratic Party) rejected this proposal and insisted that the new JMBG contain no regional or ethnic markers. The parties reached no agreement in time for the February 2013 deadline. As a result, children born after 28 February 2013 received no JMBGs without which they were, in essence, undocumented persons; a child born after this date could not receive a passport and, without passports, children in need of medical treatments not available in BiH were left to die within the country's borders.

In June, a series of peaceful protests began, led by disgruntled parents, swelling soon to become a far broader social mobilisation. Thousands gathered in front of the state parliament in Sarajevo and demanded the adoption of a new law. More broadly, protesters called for an end to the politics of perpetual nationalist brinkmanship and, in a striking act of defiance, created a human chain around the parliament building and refused to allow the dignitaries inside to leave until they passed the appropriate legislation. BiH's (in)famously apathetic citizens were suddenly, and stridently, opposing their elites and in the streets the mood was optimistic. But the subsequent political response was a jarring return to reality: MPs feigned medical emergencies to escape the building; some used their bodyguards to push violently through the crowds; others simply fled out the back door.

Eventually a new law was passed but BiH's reviled leaders had sunk to a new moral low in the eyes of the public. Some analysts called the gatherings a sign of a growing 'civic consciousness' in post-war BiH (Maksimovic and Armakolas 2013) but, in retrospect, the events were, perhaps, the last possible attempt at peaceful social change. And, with their tone deaf response, the elite had shown that this too was impossible.

The next episode would, by necessity, prompt a more radical social response.

Eight months later, on 4 February 2014, several hundred workers gathered in front of the cantonal buildings in Tuzla. Once one of the leading industrial centres in Yugoslavia, Tuzla was now crippled by unemployment and destitution. The protest was only the most recent in a years-long confrontation between the workers of the city's chemical industry and the local authorities. Shady privatisation schemes had left their factories shuttered and asset stripped, and the workers in legal and economic limbo. As so often before, the authorities refused to meet the workers, lacking both the interest and, arguably, the capacity to address their concerns.

The angry confrontations between the crowds and the police that followed were the lead news on every major broadcast in the country. The protests were nothing new but their militant tone was distinct, not just from the events of June 2013 but from most political discourse in BiH in general. Rather than merely pleading for hand-outs, these workers were seemingly bent on settling scores. The footage of infuriated workers attempting to push past officers guarding the cantonal buildings showed that popular discontent in the city had reached fever pitch.

By 6 February there were at least six thousand people in the streets of Tuzla and the small, and shrinking, cordon of riot police guarding the cantonal building could do little to hold back the crowds. That night, Bosnians and Herzegovinians watched Tuzla erupt; in the ensuing clashes between the crowds and police, a hundred officers were injured and nearly a dozen cars torched. Nothing of the sort had happened in

BiH in living memory. The next day, protests erupted all over the country. In Tuzla, the crowds again breached the police lines and torched the seat of the canton. The same occurred in Sarajevo where the crowds went on to sack the state presidency building, torching numerous police cruisers along the way. In Mostar, the newly-refurbished cantonal building was burned along with the headquarters of the HDZ and the SDA, respectively. Similar scenes played out in more than a dozen other towns and cities across the country. Four cantonal premiers resigned amid the clashes, as did the Director of Police Coordination, the country's top police officer (Mujanović and Domi 2014: 22).

While the protests occurred primarily, though not exclusively, in the FBiH entity, aggressive pre-emptive policing in the RS was proof enough of the local authorities' fear of wider ramifications. Two years earlier, a small protest movement there had begun in Banja Luka to save one of the city's last remaining green spaces. When a local businessman, known for his close association with Milorad Dodik, was granted permission by the city to bulldoze the park and build an office tower, outraged locals and activists began organising weekly 'protest walks', insisting '*park je naš!*' ('the park is ours!'). Within days, contingents of activists from Sarajevo, Zenica and Tuzla, and other major centres in FBiH, were arriving in Banja Luka to aid their neighbours across the inter-ethnic boundary line. Everyone involved recognised the significance of the marches as the organisers noted in a manifesto, writing:

We are in a time when the ruling oligarchy confirms that we, the ordinary people, are the biggest losers of the war and the transition. The oligarchy puts profit above people under the banner of national interest, personal interest above justice, and terror in place of equality.

The text went on to note the organisers' intention to challenge this dynamic:

We citizens declare that we are not irrelevant, that the authorities are afraid of 'the street!' We are in solidarity on the basis of the differences by which they mean to divide us! (Mujanović 2014b: 159)

In response, the police initiated a concerted campaign of intimidation against the activists. Minor infractions were met with vicious police assaults and threats, while both the city and entity governments made it clear that the planned project would go ahead regardless of the public outcry.

Like the JMBG protests a year later, these smaller protests in Banja Luka signalled that the political establishment in BiH – regardless of its fractured ethnic appearance – was uniform in its commitment to rule by fiat. When news broke of solidarity rallies in the RS in February 2014, the authorities reacted quickly, eager to avoid even echoes of the park protests. Attempts at rallies in Banja Luka, Zvornik and Bijeljina were met with pre-emptive arrests and a sharp increase in police presence in all public spaces. Privately, activists spoke of still more direct forms of intimidation, with police entering cafes in Banja Luka, for instance, to warn the assembled young people against any attempt to foment dissent.

In December 2018, the seriousness of these threats and fears was made clear when the RS police began violently breaking up the protests that had erupted in the

wake of the presumed murder of David Dragičević, a 21-year old Banja Luka man whose death has been pinned on criminal elements closely associated with local law enforcement. Despite the crackdown, the ‘Justice for David’ protests also spurred solidarity actions across BiH, again demonstrating the possibility for pan-ethnic activism on issues related to rule of law, accountability, transparency and dignity.

BiH’s political establishment as a whole had a great deal to fear from these protests: not only had some of the country’s primary political institutions been torched by angry crowds but the act was overwhelmingly popular, as subsequent polls showed (Klix 2014). Increasing further the pressure on the authorities, the protests were followed by the creation of grassroots, participatory, public assemblies, initially organised by a small group of students and workers in Tuzla but later expanded to Sarajevo, Zenica, Mostar and elsewhere, and later attended by thousands of citizens. In other words, not only had the citizens of BiH turned against their leaders, they had begun to create new decision-making institutions: the plenums.

### *The plenums as a participatory model*

Whether consciously or not on the part of the participants, the tenor of the protests channelled James Scott’s assessment of the role of popular insurrection in the creation of democratic regimes. Scott argues that:

[Most] of the great political reforms of the nineteenth and twentieth centuries have been accompanied by massive episodes of civil disobedience, riot, lawbreaking, the disruption of public order, and, at the limit, civil war. Such tumult not only accompanied dramatic political changes but was often absolutely instrumental in bringing them about...

Representative institutions and elections by themselves sadly, seem to rarely bring about major changes in the absence of the force majeure afforded by, say, an economic depression or international war... Ordinary parliamentary politics is noted more for its immobility than for facilitating major reforms. (Scott 2012: 16-17)

The plenums were also, in some sense, the material articulation of what the political theorist Sheldon Wolin defines as his conception of the political or ‘moments of commonality when, through public deliberations, collective power is used to promote or protect the well-being of the collectivity’ (Wolin 2016: 100). The plenum was the actualisation of the political moment or, at the very least, one concerted attempt to establish something approximating it.

The actions of BiH citizens during this period were thus deeply rooted in a substantive articulation of the democratic tradition, even as they caused panic in the international community’s supervisory presence in the country. Thereafter, citizens who attended the plenums not only had an opportunity to air their grievances with the existing authorities, they were also being invited to participate in the formation of a new kind of political project altogether: actively to join the attempt to create a series of institutions that would become the atoms of a new political society in which decisions were made collectively and directly, through deliberation and debate. In these forums, everyone had an opportunity to speak, everyone had an opportunity to respond and everyone had an opportunity to share their concerns with the collective. The plenum name invoked the memory of the old Yugoslav workers’ councils. But in

place of the mere performance of equality, as during the former one-party regime, these latter day assemblies attempted to be:

A public space for debate, without prohibition, and without hierarchies... the plenum will have a working method [but] it will not have leaders. (Tuzlanski.ba 2014)

Facilitators were present to teach the rules of engagement in these new forums but the agenda was set by the participants themselves.

Accordingly, the demands the plenums produced were of an almost exclusively socio-economic nature. They called for reviews of existing privatisations; the annulment of pending privatisation schemes; the confiscation of illegally-obtained properties; the resignations of most local (i.e. cantonal) leaders; and, often, a general return to workers' self-management (Kilibarda *et al.* 2014). While each set of demands was unique, clear themes emerged: given the opportunity to engage in meaningful, grassroots, participatory, political discourse the citizens demonstrated that the constantly evoked 'national question' that supposedly defined BiH as a social space disappeared. Their priorities were not their presumed ethno-nationality, or accompanying nationalist causes, but their material deprivation.

### *Grassroots state-building?*

Much as the citizens formed a united front so too did the politicians – against the citizens. In the days following 6 and 7 February, the leaders of the SDA, HDZ and SNSD spun the protests in virtually identical phrasing. The cause of the protests, they explained, had not been the dissatisfaction of the citizens but the involvement of shadowy outside provocateurs. The SDA claimed the protests were an elaborate plot to marginalise the Bosniak people; the HDZ claimed the same in the name of the Croats; and the SNSD, of course, echoed the same with respect to the Serbs (Istinomjer 2014). Confronted by social insurrection the nationalist blocs could only appeal to their usual narratives: the evident shift in the fundamental political framework of Bosnian society, as such, was simply incomprehensible.

One should not overstate how transformative were those days in February 2014. However the sense that the paradigm had shifted was strong. See, for instance, a TV interview with a senior citizen in Sarajevo observing the damage to the cantonal buildings in the days after the protests. Asked by the interviewer whether the torching of the building could be justified, even with the dire situation in the country, the man responded bluntly:

The only mistake [the protestors] made was not to suffocate everyone inside there; there was no point in burning [the building]. Wipe the criminals out, there is no other way. (Jašarević 2014)

Amid the anger and despite the partisan backlash, the plenums continued and won concrete demands. Aside from an initial wave of government resignations, the remaining cantonal authorities in Tuzla, Sarajevo, Mostar and a number of other municipalities were forced to take immediate measures to scrap the so-called 'white bread' policy: severance packages that were being paid out years after government

officials had left their posts (Al Jazeera Balkans 2014). The plenums also demanded that ‘expert governments’ – that is, technical governments – should replace those that had resigned and in Tuzla, at least, this occurred. Though the insistence on ‘expert governments’ can be found throughout the platforms of the various plenums, the demand was not without controversy. To whom would these new administrations be accountable? What could such governments possibly accomplish in the six or seven months left before the 2014 elections? And what authority did the plenums have to seek the ousting of democratically-elected governments in the first place? These questions are worth addressing precisely because they point to the more complex and contradictory tendencies within the plenum movement in BiH as well as the difficulty in attempting to expand the democratic experience in the country as a whole.

At the heart of the ‘expert’ thesis was the popular belief that the central problem with contemporary BiH was one particular corrupt generation of the elite and, moreover, that the task of the protesters was to expel and replace this elite with a new, responsible and accountable class of leaders as quickly as possible. Yet by failing to grasp the systemic nature of the problem in BiH, and the historic patterns that had led to the current situation, in what was otherwise a moment of great democratic triumph, the finally-mobilised citizens of BiH effectively called for their own continued marginalisation. Granted, the proposal for ‘experts’ to be at helm of the respective cantonal governments was an attempt to break the partisan gridlock of the existing system and to stave off the accusation that what the plenums were engaged in was essentially a coup. However, rather than immediately moving to transfer power to a different group of government officials, in the hope that their rule would be more benevolent, the BiH plenums might instead have considered attempting substantively to expand the possibilities for popular participation in the political process.

Given that most of the ire during the February protests was directed at the local authorities, a concrete suggestion the plenums might thereafter have offered could have been the implementation of participatory budgeting practices, at least at the municipal and cantonal level. Most famously implemented in certain low-income neighbourhoods in the Brazilian city of Porto Alegre, and since expanded to dozens of locales around the world, participatory budgeting significantly changes the power dynamics within communities by allowing ordinary citizens the opportunity to identify, study and implement large-scale public works projects (Wampler 2007). A participatory regime in BiH would not instantly transform the country, of course, but it would address the central missing element of existing political practice: namely, the near total exclusion of ordinary citizens from the decision-making processes of the elites. After all, the February protests were a radical assertion of popular agency that then, in a theoretically mature way, sought to become permanent rather than a mere explosion of fury. This impulse was, however, undone by a tendency among the citizens themselves to ascribe the ideal of good and just governance to the benevolence of the elites rather than to the agency of the citizens.

In this respect it is quite telling that the plenums did not propose something like participatory budgeting but instead opted for ‘expert rule’. In short, even within the context of a democratic political moment, the citizens of BiH were not able to create the foundations for a more permanent democratic movement.

Even so, the park protests in Banja Luka, the JMBG protests in Sarajevo, the insurrections in February of 2014 and the subsequent proliferation of the plenums, taken together, all strongly suggest that there was a new political dynamic emerging in BiH in the early to middle of the last decade, even if the country appears since to have slipped, once more, into apathetic slumber. Still, even if we think of the plenums as a ‘failure’, the Dayton constitutional order itself is no closer to remedying its internal contradictions. This particular political moment may have subsided and the articulation and exploration of a common civic project may, likewise, have only been temporary. BiH did not (and in any case, cannot be expected to) become a democratic utopia overnight, especially since the protests in February 2014 were the first genuine and sustained political moment of any meaningful consequence in more than two decades. One such moment was unlikely ever to be sufficient to transform society as a whole.

Nevertheless, they did offer an example of the kind of activism that was possible in BiH; an effort that, if sustained over many such moments and allowed to coalesce into a broader movement, could, in the final analysis, chart a new course. After all, the events of February 2014 were themselves the culmination of one such movement, or wave, that had begun in 2012 with the park protests in Banja Luka and continued with the JMBG protests in 2013, before finally erupting in Tuzla in 2014. Moreover, we now have a small, but growing, democratic catalogue in BiH of recent experiments with concrete attempts to create a genuinely democratic polity. So far, these have failed to transform society as a whole, but they have shown ordinary citizens their ability to come together and to strike fear into their elites. That fear was, indeed, struck into the hearts of the elites is not only proven by their collective panicked scrambling at the time of the protests in both 2013 and 2014 but by the dramatic post-protest investment in repressive police armaments (Mujkić 2015).

This anticipation of further civil unrest by the elites suggests, as Scott would use the phrase, that we appear finally to be past the concern with merely ‘decorous’ forms of protest in BiH.

## Conclusions

These frenetic bursts are the first steps in building a growing movement that, in its individual episodes, may be fleeting but which, as its final product, can produce a society transformed, even in BiH. This is certainly what the history of representative democracy suggests to us about the nature of democracy. The ‘class compromise’ at the heart of western liberal democracy – between its popular and aristocratic elements – would not be possible if the marginalised and alienated had not, over the course of centuries of struggles and frequent defeats, in the end, been able to shift the political paradigm of their societies from feudal absolutism to democratic representation. To be clear, the historic ruling classes in the west were no more benevolent in their administration than contemporary Balkan ‘big men’ (Kanin 2003). But the masses of the west were more successful in contesting the rights and abilities of their elites to rule at will and, in the process, won for themselves a more participatory and democratic tradition of governance. And, more importantly, the struggle to preserve and expand what democratic citizenship means in the 21<sup>st</sup> century continues in even

the most prosperous, equal and free societies in the world. Several important conclusions follow from this analysis for the citizens of contemporary BiH.

To begin with, there is the task of dismantling ethno-nationalist narratives and to note that, as it concerns the potential for any future democratic *polis* in BiH, this need is constant and unavoidable. Nationalism is, was and shall remain the primary tool of the Balkan elites in their attempts politically and economically to dispossess ordinary Bosnians and Herzegovinians and (post)Yugoslavs more broadly. In this respect, there is no substitute for the plenum movement's ultimate success; namely, the insistence on concrete and exclusively socio-economic reforms. While BiH's current territorial and political fragmentation is absurd, it cannot be the task of grassroots protest movements to draw new maps. Indeed, BiH's apartheid cartographies will be undone not by the drawing of new boundaries *per se* – which is not to reject the idea of constitutional and administrative reform – but by convincing ordinary Bosnians and Herzegovinians that the existing borders are irrational. The plenums did much more to accomplish this than almost any Euro-American constitutional reform initiative to date precisely because they took as their central unit of analysis not the country's territorial and ethnic divisions but its broader socio-economic situation. They, of course, contained a critique of BiH's post-genocide realities but it was a critique embedded within everyday struggles for survival and dignity.

In the final analysis, a new social contract in BiH is only possible if it is struck by ordinary Bosnians and Herzegovinians themselves and this, in turn, will only be possible when they recognise some essential likeness in each other. The most obvious and most historically important similarity, aside from their shared language and culture, is these peoples' collective dispossession by their professed national leaders. Thus, as the protests in Banja Luka, Sarajevo and across various cities in February 2014 showed, the best way to do as much is – consistently and, when necessary, forcefully – to assert the right of ordinary citizens to participate in the everyday conduct of politics. Though it was most likely a function of the fractured logic of the Dayton regime, here too the February protests fundamentally struck the right note. By focusing their ire primarily on local leaders the protesters effectively deflated the nationalist canard that the protests were actually an attack on the respective ethnic other(s).

There can be no substitute for democratic practice. It is precisely these fleeting political moments, as Wolin calls them, that allow for 'the wholesale transgression of inherited forms'. Democracy, we must recall, 'was born in transgressive acts, for the demos could not participate in power without shattering the class, status, and value systems by which it was excluded' (Wolin 2016: 106). And only in such a context can those 'moments of commonality when, through public deliberations, collective power is used to promote or protect the well-being of the collectivity' be brought to fruition (Wolin 2016: 100).

Episodes of defeated and aborted revolts are not proof that this aspirational strategy is doomed to failure but, quite on the contrary, that it is the only approach that has ever produced genuinely democratic results or, at the very least, the potential for lasting transformation. It has been the defeat of such revolts, by kleptocratic and reactionary elites, that has resulted in disaster time and again in the Balkans, not in

their attempt. Accordingly, only the final triumph of these collective popular interventions can hope to create a different, participatory, democratic Balkans and BiH. This lesson is especially important today, perhaps more so than at any other point in BiH's history, when it is clear that reform or change of any sort cannot and will not come from within the existing system. It is thus the responsibility of ordinary Bosnians and Herzegovinians to create and enact social practices worthy of the democratic label. These, in time, may be appended by more rational administrative and constitutional structures, inevitably delivered, at least in part, through the international community.

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