

Deliberative Power-Sharing The Government in Opposition Approach

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ABSTRACT

In recent years there has been a heightened interest in applying the theories of deliberative democracy to constitutional design in divided societies. However, while new normative criteria for evaluating institutional designs have evolved within deliberative theories of democracy, there has been very little exploration of institutional mechanisms beyond those presented in the consociational and centripetal models. This thesis examines the emergence of new deliberative standards for evaluating power-sharing institutions and then uses those standards to evaluate a new genre of institutional mechanisms called, 'government in opposition rules'. The argument is presented that deliberative power-sharing based on government in opposition rules would resolve many of the weaknesses of both the centripetal and consociational models. The author presents Bosnia-Herzegovina as a case study to illustrate a basic framework for utilizing government in opposition rules according to procedural standards advanced within deliberative theories of democracy.

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INTRODUCTION

In recent years there has been a revival of interests in applying deliberative theories of democracy to the context of divided societies. These interests are owed, in part, to shortcomings within liberal and republican models of democracy to provide sufficient procedural standards for resolving conflict between ethnic groups. Deliberative theories of democracy, on the other hand, recognize a set of procedural standards for achieving a common civic identity through conflict resolution strategies. Some noteworthy efforts have been made in recent years to operationalize deliberative norms, but the goal of establishing a fully operational deliberative powers-sharing model has not yet been achieved. Policy-makers and practitioners are in need of concrete proposals. There is, however, hope for rectifying this gap between theory and practice. In the last few years a new approach to constitutional design has emerged offering a new genre of institutional rules that may serve as better replacements, or at the very least complements, to the kinds of counter-majoritarian treatments offered within the existing approaches to power-sharing. These institutional rules are referred to as ‘government in opposition’ rules. The enumeration of these institutional measures over the past few years has gradually led to an entirely new study of how powers can be divided between winning and losing parties. Therefore, my objective in this thesis is to examine how these rules might be used according to deliberative standards in hopes of providing divided societies with a set of institutions to enable citizens to engage politically with one another as fellow citizens rather than as ethnic groups in conflict.

The outline of this thesis will be as follows. In the first chapter I will provide a general overview of the context of deliberative power-sharing among the other theories of democracy in

divided societies. In chapter two I present an overview of the democratic values and deliberative norms that will provide the theoretical foundation upon which to structure deliberative power-sharing institutions. In the third chapter I will provide an overview of institutional mechanisms that conform to procedural requirements of deliberative democracy. In the fourth and final chapter I will bring the discussion of deliberative norms and institutional mechanisms into focus by suggesting a workable model that incorporates both normative and analytical considerations that institutional designers in divided societies can build upon in future studies.

I. SITUATING THE DEBATE

There are many approaches to democratic design in divided societies. The two that have been most frequently advanced are sometimes referred to under the broad rubric of 'accommodation' and 'integration.' Debates between and within these two broad categories of representative democracy are well known and frequently discussed within academic literature. The approach however that I will deal with in this paper is known as deliberative democracy and does not fall neatly into either of these two categories.

Accommodationists are united in the view that majority rule in divided societies is likely to result in the partisan supremacy of one dominant group, and for this reason, accommodationists find it necessary to advocate counter-majoritarian measures that go beyond basic individual rights protections such as a bill of rights, and constitutional review.¹ The views held by accommodationists are predominately an outgrowth of practical concerns regarding the political and social roots of ethnic conflict.

The democratic mechanisms advocated by accommodationists vary depending on whether they endorse one or more of the following strategies: consociationalism, centripetalism, multiculturalism, or territorial pluralism. Advocates of consociationalism, like Arend Lijphart argue in favor of group oriented power-sharing arrangements, such as a mutual veto, segmental

¹ W. Arthur Lewis, *Politics in West Africa* (1965).

autonomy, proportional representation, or territorial autonomy.² Centripetalists, like Donald Horowitz, on the other hand argue in favor of electoral treatments for promoting inter-group coalitions through vote pooling mechanisms.³ Multiculturalists, like Will Kymlicka, will often argue for cultural autonomy, group rights or proportional representation.⁴ Territorial pluralism are those countries like Canada who allow multiple national identities to exist within the same state, but with significant autonomy in sub-regions of the state.⁵ Of course many countries can and do apply combinations of these approaches. Ultimately, however, the view that is shared by most advocates of accommodation is the ‘public and private recognition of substate ethnic, linguistic, religious, or national group categories; and the emphasis on addressing the needs and preferences of all such communities rather than the needs of a single nation that is coterminous with the state’.⁶

Integrationists on the other hand tend to occupy the opposite spectrum of democratic politics, advocating instead for a more modern type of participatory democracy which emphasizes a single national identity where group preferences are secondary to the formation of a common general will.⁷ Integrationists tend to advance normative theories of democracy, that are based on republican, liberal, or social ideals.⁸ It is also common for integrationist to argue that accommodationist approaches exacerbate the politicization of ethnic identities and can lead to even more extreme forms of ethno-nationalism.⁹

² See: John McGarry, Brendan O’Leary & Richard Simeon, *Integration or accommodation? The enduring debate in conflict regulation*, 41-88 (2008). pp 41 - 88

³ Sujit Choudhry, *Bridging comparative politics and comparative constitutional law*, (2008). pp. 15-26

⁴ Supra note 2 at 56

⁵ Supra note 2 at 63

⁶ Supra note 2 at 69

⁷ Supra note 2 at 45 - 51

⁸ id.

⁹ John McGarry & Brendan O’Leary, *Introduction: the Macro-Political Regulation of Ethnic Conflict*, in *The Politics of Ethnic Conflict regulation: Case Studies of Protracted Ethnic Conflict* (1993).

Deliberative theories of democracy, which I will deal with in this paper, operate within a different paradigm of normative reasoning than either accommodationists or integrationists. Whereas most other democratic models center on the aggregation of interests through electoral systems, deliberative theorists argue that what animates democracy are the processes of decision making which lead to consensus through well-reasoned arguments between individuals who have equal regards for the common good.¹⁰ In the context of divided societies this translates into measures of power-sharing that require elected representatives to distance themselves from their own personal or group interests and adopt laws, policies and institutions that promote the interests of all citizens. Deliberative theories differ amongst themselves on the exact nature of the institutional devices that can achieve this, but most agree on the standards on which such institutions ought to be based.¹¹

Can either integrationist, accommodationist, or deliberative theorists make a stronger claim of consistency with democratic values? In response to this questions, normative claims will arise out of an inclination to choose between competing democratic values, and empirical claims will arise because we expect that certain policy actions will lead to particular outcomes. I am more cautiously aligned with scholars who view that neither normative or empirical reasoning alone will yield a firm conclusion whether one theory of democracy is necessarily superior or inferior to its alternatives.¹²

All rival conceptions of democracy have some empirical and normative merit depending on demographic and historical contexts.¹³ This is because high-level theories of democracy will

¹⁰ Amy Gutman & Dennis Thompson, *Why Deliberative Democracy?* (2004). p 3

¹¹ See generally: Frank Cunningham, *Theories of Democracy: A Critical Introduction* (2002)

¹² Robert Dahl, *Democracy and its Critics* (1991). p. 156. See also, Brian Barry, *Is Democracy Special?*, in *Democracy and Power* (1979).

¹³ John McGarry, Brendan O'Leary & Richard Simeon, *Integration or accommodation? The enduring debate in conflict regulation*, 41-88 (2008). 85

eventually converge on particulars at the operating level.¹⁴ Moreover, skepticism about the merits of a particular theory of democratic representation need not prevent theories from uniting on certain democratic values, such as rejecting self-interested representation by legislators or having accurate representation of voter preferences within government.¹⁵ Therefore, institutional designers who give preference to one normative theory over another need not feel guilty, as long as historical and regional contexts allow for some exceptions to occur.

So, whereas much of the literature treats competing theories of democracy as irreconcilable, institutional designs can incorporate aspects of multiple theories of democracy. If we take multiethnic Fiji as an example, we find that institutional designers took an analytical approach to building constitutional reforms that ended up adopting both accommodationist and integrationist devices.¹⁶ In 1997, a group of analysts examined Fiji's political system over a four year period and produced a set of recommendations for a recently adopted constitution that combined measures to guarantee a minimum level of representation in parliament for Fiji's traditional ethnic group (an accommodationist approach) with measures to promote the formation of political alliances across group lines (an integrative approach).¹⁷ This example demonstrates how creative solutions tailored to a unique set of problems can be found through a well-designed analytical process, rather than strict adherence to a single normative or empirical argument.

Conversely, while moderation is an important principle for institutional design, it is also good to keep in mind that normative and empirical arguments can help when the aim is to design better functioning institutions. Ever since Arend Lijphart and Donald Horowitz both proposed

¹⁴ Adrian Vermeule, *Mechanisms of Democracy: Institutional Design* Writ Small (2007). 13

¹⁵ *Id.*

¹⁶ Timothy Sisk, *Power Sharing, Beyond Intractability* (2003)

¹⁷ *Id.*

their ground-breaking power-sharing models over twenty years ago, there have been many advancements to both the normative theories of deliberative democracy as well as comparative approaches to constitutionalism. These developments have led to a revitalization of doubts regarding the basic assumptions upon which those power-sharing arrangements were originally based. My main aim here is to discuss these new advancements in hope of clarifying some of the long standing debates within power-sharing literature regarding the effectiveness of power-sharing institutions.

II. DEMOCRATIC VALUES AND DELIBERATIVE NORMS

A. INTRINSIC EQUALITY AND PERSONAL AUTONOMY

Robert Dahl has argued that any adequate defense of democracy will inevitably fall back on two fundamental values, namely: *intrinsic equality* and *personal autonomy*.¹⁸ Neither, however, he says, is sufficient by itself to ensure the promise of democratic governance, but rather they must operate side-by-side throughout the political process.¹⁹ Intrinsic equality is based on the notion that each human being has independent moral standing and is valuable in his or her own right.²⁰ Yet, while intrinsic equality supports the view that government must aspire to treat all citizens as intrinsically equal, this does not necessarily mean that all citizens would have an equal say in the process of governing. In other words, it might be possible for an individual (or an autocratic regime) to impose their own view of what is good for others and govern on that basis.²¹ Therefore, personal autonomy, as a second fundamental value is necessary to complete the equation. Personal autonomy, holds that individuals are the best judge of their own good and interests, and on that basis political institutions should allow citizens to advance their own interests in the public and private sphere.²²

¹⁸ Robert Dahl, *Democracy and its Critics* (1989).

¹⁹ Ian O'Flynn, *Deliberative Democracy and Divided Societies* (2006). 45

²⁰ *Supra* note 19 at 43

²¹ *Supra* note 19 at 45

²² *Id.*

However, while the values of intrinsic equality and personal autonomy may constitute the ‘moral core’ of democracy, it can also be said that this core can be realized in an indeterminate number of ways, and as such, different interpretations of these values have lead to many competing conceptions of democracy.²³ Liberal theories of democracy, for example, give greater concern for individual liberty and equal ability to pursue individual interests, whereas republicanism, places emphasis on political solidarity based on a singular national identity.²⁴ Moreover, both of these approaches place higher emphasis on an individual based rights approach than they do group-rights. For this reason, both liberal and republican theories of democracy are less appealing in societies where there is historical violence, repression, or conflict between communities. In such cases, it is difficult to build trust in establishing a common civic identity and ending civil strife without some degree of group rights, autonomy, and/or group accommodation.

These difficult realities in divided societies have led scholars, like Jurgen Habermas and others to expound on alternative theories of democracy that would give highly divergent sectors of society recourse to a procedural framework for building consensus amongst themselves through deliberation. Habermas uses aspects of discourse theory to develop a process whereby groups with divergent values can arrive at a common civic identity, without having to relinquish their subgroup identities or autonomy.²⁵

Ian O’Flynn has argued that, like liberalism, deliberative democracy recognizes the need to protect citizens from hyper-active majorities, but at the same time recognizes the need to

²³ Supra note 19 at 48

²⁴ Supra note 19 at 54

²⁵ See generally Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* Technology (William Rehg tran., 2 ed. 1996).

accommodate competing group interests.²⁶ And like republicanism, deliberative democracy recognizes the importance of public deliberation about the civic character of society, but rather than providing a substantive vision of that character deliberative democracy emphasizes a procedural process for negotiating and arriving at a mutually agreeable ‘middle ground’.²⁷ The logic behind a deliberative approach is that subgroup solidarity and accommodation need not transgress the values of intrinsic equality and personal autonomy as long as procedural standards are adopted that inhibit a dominant community from subsuming the functions of state, as can often happen under a substantive conception of civic identity.²⁸ Therefore, it is necessary to clarify those procedural conditions under which citizens in divided societies can deliberate and decide on what the civic character of the state ought to look like and what the content of decisions ought to be.

O’Flynn, argues that a deliberative theory of democracy presents two principle methods for balancing intrinsic equality and personal autonomy.²⁹ The first is the ‘requirement of reciprocity’ and the second is the ‘requirement of publicity’. His argument is that these two standards of deliberative democracy, when applied to deeply divided societies, can ‘inform the choice of power-sharing institutions in the first instance, and, later, guide the progress of those institutions, towards or away from those institutions, over time’.³⁰ However, while he elaborates on reforms of both consociational power-sharing and centripetal power-sharing, he also emphasis a need for future comparative studies to expound on the number of deliberative mechanisms to manage and resolve ethnic conflict. The lack of clearly defined institutional measures that

²⁶ Supra note 19 at 55

²⁷ Id.

²⁸ Supra note 19 at 72

²⁹ Supra note 19 at 77

³⁰ Supra note 19 at 4; Joshua Cohen, *Deliberation and Democratic Legitimacy*, in *Deliberative Democracy: Essays on Reason and Politics* (1997). 67 - 91

conform to deliberative principles is, therefore, a major obstacle to advancing a comprehensive approach to deliberative democracy in divided societies.

B. DELIBERATIVE REQUIREMENTS FOR CONSTITUTIONAL DESIGN

1. The requirement of reciprocity

In the most basic sense, reciprocity is a characteristic of measures or institutions that lead to proposals that all groups or individuals may find mutually agreeable because they do not arbitrarily privilege certain individuals or groups over others.³¹ For a measure to qualify as such, it must encourage conflict resolution strategies that are capable of narrowing the gap between competing political perspectives.³² Because interests can be grounded in very different underlying values, often this will entail a decision making process that allows for decision makers to deliberate their way past their first order interests, towards more amenable second order principles and values that provide the basis for a stronger sense of common national identity and that aid in creating shareable goods.³³ In another sense, reciprocal institutions are those wherein decision-makers attempt to achieve ends not by threatening to impose sanctions on opposing sides, but rather where all sides attempt to resolve political disagreements through the strength of argument. This implies that all major political disagreements undergo a process of public reasoning and discussion. It also calls for the establishment of institutions and mechanisms that, to the extent possible, discourage tit-for-tat threats between powerful players

³¹ Supra note 19 at 79

³² Id.

³³ Supra note 19 at 85

who wish to shape public debate in their own interests. In summary, reciprocity requirements exist in order to give expression to the basic democratic idea that all individuals have independent moral standing. They also help advance a stronger sense of common national identity that is based on mutual understanding.

2. The requirement of publicity

The requirement of reciprocity, however, only partially completes the equation. This is because reciprocity is concerned only with how political proposals are justified. In order to give effect to the value of personal autonomy, there is still a need for reciprocal deliberation to occur under conditions that enable ordinary people to see that their interests and opinions have been afforded a fair hearing.³⁴ This then leads into a discussion of the publicity requirement advanced by deliberative democracy. Measures that fulfill the requirement of publicity are those that allow for all citizens to see that fair reasoning is applied for all legislation or decisions reached by representatives within the political process.³⁵ Publicity works to the advantage of citizens rather than politicians because it acts as a preventative barrier to corruption. It also aids in building trust in democratic institutions that are struggling to transition from foreign dependence and gridlock between warring elites. More to the point, we may think of the requirement of publicity as a means of insuring that the self-interest of officials coincide with the general interests of all. This is inline with Kant's 'transcendental formula of public law' which provides that any policy, in order for it to be considered right or just, must pass the test of public scrutiny.³⁶ If the process of reasoning and discussion is not subject to full public knowledge then it might reasonably be

³⁴ Supranote 19 at 100

³⁵ Id.; See also Robert Goodin, *Motivating Political Morality* (1992). 131

³⁶ Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, in Kant: *Political Writings*. 126

assumed that the policy does not express the collective good but rather an insufficient subset of the interests of the population. Not all real-world contexts will benefit from public scrutiny, but it is still necessary that publicly justifiable reasons be given for those decision which may require insulated negotiation. Therefore, procedural legitimacy should be the operative standard, so that outcomes of political processes are subjected to the suspicion that they may have come about in a deficient manner.³⁷

C. INSTITUTIONALIZING DELIBERATION IN DIVIDED SOCIETIES

The two principles of reciprocity and publicity, provide a set of criteria that can be operationalized when drafting constitutions, devising conciliatory political mechanisms, and in making public policy.³⁸ However, it may also be mentioned that while the two principles of reciprocity and publicity are instructive, there is still much to be clarified about how these standards can be applied in institutional terms. This fact greatly inhibits the extent to which deliberative ideals can be achieved. In other words, without sufficient procedural safeguards, the soundness and propriety of deliberative outcomes will either not be self-evident to policy makers or may not be fully realized when implemented.³⁹ So, while it is possible to recommend deliberation as a standard of ‘good practice’, it is an entirely different question to ask how they might be institutionalized.

Understandably, there are many doubts regarding the willingness to adopt deliberative reforms in divided societies. Without political and social buy-in it is not likely that elites, parties,

³⁷ Supra note 19 at 106

³⁸ Supra note 19 at 22

³⁹ Melissa Williams, *The Uneasy Alliance of Group Representation and Deliberative Democracy*, in *Citizenship in Diverse Societies* (Will Kymlicka & W. Norman eds., 2000). 138

or voters will rally behind a deliberative agenda. But this is not an argument against deliberative institutions, per say, but rather an appeal for civil society and/or outside influences to play a more substantial role in building momentum for deliberative norms within society. These efforts are generally predicated on softening or eliminating an emphasis on ethno-centric behavior within the political process. Consociational governments, however, are for the most part, not designed to allow significant political competition beyond the elite level. Therefore, at the level of civil society as well as at the national level, deliberative reforms may be a non-starter.

In this paper I cannot adequately provide an answer to how or through what process deliberative reforms may be instituted, rather, my argument is that institutional designers must first reach a consensus on the kinds of institutional designs that promote deliberative outcomes, before substantial reforms can occur. In the following section I look at a different approach to constitutional design that may help deliberative theorists design power-sharing models that avoid many of the problems associated with consociational power-sharing.

D. MANAGING COERCIVE POWER IN DIVIDED SOCIETIES

Having dealt with some of the basic principles behind deliberative democracy, I wish to shift the focus of my argument towards another critical and theoretical aspect of power-sharing, namely the role of ‘coercion’ and ‘deliberation’ within democratic decision making. These distinctions will provide insight for the following chapter which provides additional insight for taming the unacceptable uses of coercion.

Power-sharing governments, are characterized by institutions which grant significant power (or coercion) to political elites and/or sectarian groups. By “power” and “coercion” I use the following definition “the actual or potential causal relation between the interests of an actor or set of actors and the outcome itself.”⁴⁰ This is partially justified by the “realist” (or empirical) view that whenever democracies are in a situation in which the interests of their members are in severe conflict, actors generally need resort to some form of coercion to secure the equal protection of their interests.⁴¹ Hence, while many forms of democratic coercion are intolerable, there is no reasonable way of entirely eradicating coercion, but rather, only reducing it to levels that are mutually tolerable.

In consociational power-sharing democracies, institutions are designed to superimpose a procedural ideal of equal political power between groups which then make it possible for those that have been systematically oppressed to redress that imbalance through entrenched powers of state coercion. Advocates of consociational power-sharing provide coercive powers to ethnic groups as a means of providing them with political negotiating tools that enable them to redress imbalances in the ethnic status quo. Another, reason advocates of consociationalism see it necessary to grant coercive powers to warring parties, is that it provides incentive for groups to put an end to civil conflict and endorse their support for a peace agreement.

Deliberative theories of democracy, however, promote the “idealist” view that ‘legitimate power can arise only among those who form common convictions arrived through communication that is free from coercion’.⁴² Deliberation might be defined in a broad sense as “communication that induces reflection on preferences in a non-coercive fashion”.⁴³ However,

⁴⁰ Jane Mansbridge, *Using Power/Fighting Power*, 1 *Constellations* 53-73 (1994). 55.

⁴¹ *Supra* note 40 at 57.

⁴² Samantha Besson & Jose Luis Marti, *Deliberative Democracy and its discontents* (2006). p. 118

⁴³ John S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (2000). p. 76.

the deliberative situation described by Jurgen Habermas, represents a political ideal that has been difficult to define in practice. This is in part owed to the fact that there are virtually an infinite number of ‘deliberative spaces’ (e.g. churches, cafes, clubs, associations, social networking websites, etc.) within every society, thus, state policies to promote deliberation can be costly and will likely have only partially influence. Thus, for post-conflict societies where common and conflicting interests are mixed, it can be argued that deliberative democracy is not always achievable and even if the were, the outcomes would certainly not always be ideal. Hence, while it is desirable to derive legitimate power through democratic deliberation, institutional designers should not attempt to implement a procedural theory of deliberation, that leads to implausibly narrow conceptions of what is possible in a conflict laden society.⁴⁴ Nevertheless, in spite of these precautions a deliberative theory of democracy can at least serve as a guidepost for dealing with less than ideal situations.⁴⁵

III. PROBLEMS WITH TRADITIONAL FORMS OF POWER-SHARING

Any serious attempt to analyze power-sharing in divided societies would not be complete without examination of the two most commonly used power-sharing models. The consociational model, most commonly associated with the works of Arend Lijphart, has been widely used in many countries, as has the centripetal model (sometimes referred to as the majoritarian-incentives model) which is commonly associated with Donald Horowitz and Benjamin Reilly. Various forms of the consociational model have been used in countries like Bosnia-Herzegovina, Lebanon, India, Belgium, Switzerland, Iraq, Sudan, Afghanistan, Nigeria, Ethiopia, Zimbabwe

⁴⁴ Supra note 42 at 86

⁴⁵ Id.

and many others. The centripetal model have been used in countries like Australia, Fiji, Papua New Guinea, Estonia, and others. Enormous amounts of academic literature have been produced concerning the ongoing debate over whether of these two models constitutes a more appropriate choice of for the management and resolution of ethnic conflict. This section is by no means a comprehensive analysis of the two models, but rather is an attempt to summarize some of the most salient criticisms that are relevant to the discussion of deliberative democracy in divided societies.

A. CONSOCIATIONAL POWER-SHARING

Consociational power-sharing represents the dominant model of democratic government for divided societies. Lijphart views the consociational model as the best-fit for post-conflict circumstances involving bargaining between ethnic elites. At its core, consociational power-sharing establishes a cartel of elites who, after agreeing to lay down arms and stabilize a fragmented society, negotiate a formula for shared-power within the state. National elections then serve as a means of replenishing elites at the national level who are partial to one of the constituent groups in the former peace agreement. Law making decisions taken at the national level are meant to be weighed against the wishes of each segmental community through a political bargaining processes that is safeguarded through veto power, a shared executive, and proportional representation for segmental groups within parliament.⁴⁶ In this thesis I will only deal with concerns regarding the grand coalition and the mutual veto.

⁴⁶ The four-pronged consociational framework has evolved over time and in practice there are a wide variety of different institutional forms, that can include supplemental institutional rules and procedures.

The first and most significant institutional feature of consociationalism is the ‘grand coalition’ (or power-sharing cabinet or executive) in which elites from each major ethnic group (or segment) in society hold positions. A consociational grand coalition can take the form of a broadly representative, multiparty coalition cabinet, but is not limited to such arrangements. It may also take the form of an informal advisory committee comprised of multi-ethnic groups or alternating presidencies (sequential “grand coalition”) and other top officeholders.⁴⁷ The meaningful feature of the consociational grand coalition is not necessarily adherence to a strict formula but rather the inclusion of broad distinctive ethnic groups or multiple parties if they happen to coincide with such groups.⁴⁸

The second distinguishing feature of a consociational democracy is the ‘mutual’ or ‘minority veto’, which enables groups to block any attempts to eliminate or reduce their autonomy. The mutual veto is also a very powerful tool that when put in the hands of contentious elites prevents the possibility that major decisions will be taken without full agreement of all significant groups.⁴⁹ Subsequently, it has been the source of much contention and stalemate because it can often lead to prolonged institutional paralysis. It therefore can be as much a tool for negative engagement as much as it is for providing protection for ethnic groups.

In regards to consociational power-sharing, the main concerns advanced by deliberative democracy are that these arrangements largely do not satisfy the requirements of publicity and reciprocity for two reasons. First, while there may be some degree of accountability due to the expressed interests of segmental groups, there is still insufficient space for the kinds of alternative avenues of political expression through which cross-cutting interests and experiences

For the sake of presenting a basic overview I will deal primarily with the main features and add context where appropriate.

⁴⁷ Arend Lijphart, *Thinking about Democracy* (2008). 45

⁴⁸ Id.

⁴⁹ Supra note 47 at 49

can be expressed, and this generally inhibits the collective responsibility of state actors.⁵⁰ Secondly, by virtue of the fact that little space exists for opposition parties to check the behavior of those in government, there is a lack of assurance that decisions are justified in terms that everyone in society can reasonably accept.⁵¹ In both cases, there is little potential to reach compromise on the kinds of shareable goods that can form the basis of a common national identity.

In their defense, consociationalist may object to these kinds of normative concerns, on the basis that elites are unlikely to adopt a formation of government that does not predominately favor their segmental groups, and also because they are skeptical of any group claiming to be neutral or “cross-cutting”. Consociationalists also reference instances in other countries like Switzerland where grand coalitions have succeeded. They also claim that because elites have a relatively equal share of power they will attempt to use that power to hold each other accountable. But apart from the fact that consociational governments are a more attractive option for ethnic elites who are sitting at the bargaining table at the outset of a peace agreement, these empirical claims generally fail to explain why centering power around ethnic elites is the most appropriate way of managing ethnic conflict, especially when ethnic elites are more likely to use that power in self-interested ways rather than cross-cutting ways, thereby exacerbating ethnic conflict.

B. CENTRIPETAL POWER-SHARING

⁵⁰ Supra note 19 at 156 - 161

⁵¹ Id.

The centripetal approach to power-sharing centers on a collectivity of electoral and federal arrangements that aim to maximize incentive for inter-group cooperation. Benjamin Reilly defines the centripetal approach as ‘a political system or strategy designed to focus competition at the moderate centre rather than the extremes’.⁵² He cites three main devices for doing so: 1) electoral incentives, 2) multi-ethnic areas for bargaining, and 3) centrist aggregative, and multi-ethnic political parties. Centripetal proposals seek to manage conflict through devices that focus on depoliticizing ethnicity through institutional incentives for politicians and their constituents to accommodate the interests of rival groups. Parties, elections and representative institutions are therefor the main sources of engineering cross-ethnic cooperation.

The first and most heavily emphasized component of the centripetal model is the adoption of an electoral system that requires campaigning politicians to attract votes from ethnic groups other than their own. Centripetalists therefore argue in favor of preferential voting systems like the single transferable vote (STV) or the alternative vote (AV), because they allow voters to rank candidates on the ballot in order of their preferences. The underlying assumption is that such rankings will encourage voters to transfer lower-order preferences to moderate candidates from opposing groups. More specifically, if the increased chance of winning seats on vote transfers outweighs the chances of losing votes to extreme members within their own ethnic group, then this will mean that lower-order preferences are a valuable tool for ethnic parties to adopt compromising policies.⁵³

The second feature of centripetalism involves the creation of voluntary arenas of bargaining. Reilly defines these as arenas ‘under which political actors from different groups have an incentive to come together to bargain and negotiate in the search for cross-partisan and

⁵² Benjamin Reilly, *Democracy in Divided Societies: Electoral Engineering for Conflict Management* (2004), p. 11

⁵³ *Id.* at 11

cross-ethnic vote-pooling deals, negotiations which may then lead on to discussion of other more substantial issues'. Bargaining arenas are therefore predicated on both the existence of successfully engineered preferential electoral rules as well as favorable social conditions. The process of bargaining generally occurs on a voluntary basis over technical electoral matters such as the number of preferences to be presented on ballots and negotiable issues like resource allocation. Such forums of bargaining, or so it is argued, are not intended so much as a means of resolving ongoing collective conflicts but rather are intended to normalize a self-enforced practice of inter-party negotiation. Centrepetalists concede however that the weaknesses of advocating bargaining within divided societies stems from the many barriers to communication. It also entails a risk of zero-sum outcomes if groups refuse to compromise.

Coalitions consisting of aggregated inter-ethnic political platforms, is the third feature of the centripetal model. They are predicated on the successful implementation of the first two features. As Reilly explains, multi-ethnic coalitions are organized at the pre-electoral level by negotiating lower-order vote transfers, preference exchanges, and policy platforms. In theory, the intra-party exchange of 'middle moderate' parties and candidates into political alliances provides for a greater range of moderate policy options for voters to choose from. Horowitz has argued that such coalitions should be the essential component of any successful power-sharing arrangement because their diverse formation leads to multi-ethnic cooperation and majoritarian consensus on state policy.⁵⁴

At first inspection, the centripetal model's incentives-based approach may seem like a good way of encouraging reciprocity. Its aim is to use electoral incentives to encourage parties to develop moderate platforms by appealing to a wider audience. However, a deeper analysis reveals several key flaws with this approach. First, it is unlikely that AV would ever be agreed to

⁵⁴ See: Donald L. Horowitz, *Ethnic Groups in Conflict* (1985).

by hardline ethnic parties entering a constitutional settlement if they believed it would be likely to undermine their electoral support'.⁵⁵ Second, in a divided society, ethnic parties still likely win the largest share of the vote. This is because AV is based on a majority threshold operating in a single-member constituency, and in the end a candidate seeking to represent some particular ethnic group will almost always win.⁵⁶ Lastly, even if lower-order preferences are transferred to moderate candidates from another ethnic groups, the aim is generally not to advance the common good, but rather to advance the interests of their own ethnic group.⁵⁷ Therefore, in final analysis, the inter-ethnic bargaining which is intended to be the necessary momentum to end ethnic conflict, is simply a means of advancing strategic interests rather than common civil interests.

⁵⁵ John McGarry & Brendon O'Leary, *The Northern Ireland Conflict: Consociational Engagements* (2004), p. 30

⁵⁶ *Supra* note 19 at 155

⁵⁷ *Id.*

IV. GOVERNMENT IN OPPOSITION RULES

There is a well-known tension between the majoritarian legislative will and counter-majoritarian constitutional constraints. Solving this dilemma is largely an issue of finding a mutually tolerable distribution of coercive power between majorities and minorities. The two dominate power-sharing models fail to resolve this tension in an adequate way. In the consociational model, government cannot function efficiently because there are too many veto players who are able to hold the political process hostage to their competing interests. On the other hand, the centripetal model lacks any substantial counter-majoritarian mechanisms for preventing democratically enacted laws or their enforcement from permitting officially sanctioned repression of disfavored legislative minorities. The mechanisms I describe in this section, if engineered successfully and in accordance with deliberative requirements, allows for this balance to be struck thereby creating a deliberative-friendly form of power-sharing.

It is common to think of majority rule as a ‘winner-takes-all’ endeavor, where a singular winning party or coalition controls all substantial powers of government and where losing parties possess only procedural influence. In a similar vain, losers’ powers are commonly thought to be those that block and forestall, while winners’ powers are the power to legislate and to coerce.⁵⁸ However, these assumptions overlook a very important practical dimension, namely that losers’ powers might also contain elements of winners’ powers, particularly when they are significant enough to produce, forestall, or influence an enactment of law.⁵⁹ More importantly, and to the point, is that in many democratic regimes, winning coalitions are not necessarily always given all winners’ powers, and likewise losing coalitions are not always granted solely losers’ powers.

⁵⁸ David Fontana, *Government in Opposition*, 119 *The Yale Law Journal* 548-623 (2009). 557

⁵⁹ *Id.*

Structurally speaking, therefore, it would be more accurate to say that most democratic regimes, stable and fragile alike, will likely entail a continuum of winning powers afforded to both winning and losing coalitions.⁶⁰ The study of these kinds of powers that enable a minority to act as a majority are what David Fontana has referred to as ‘government in opposition’ rules.⁶¹

Government in opposition rules are based primarily on the assumption that by awarding (minimum winning) losing opposition parties a substantial (but not excessive) role in the development and execution of national policy, the result will be an opposition that is more experienced and responsible should they ever assume power through winning elections.⁶² It also means that minorities have the power to force accountability upon government by increasing the degree of public discourse and therefore raising the legitimacy of majoritarian decision making.⁶³

Government in opposition rules are important to deliberative power-sharing in divided societies because they allow us to understand the sorts of powers that enable minorities to participate more effectively in a democracy. In turn, they also allow us to resolve one of the most problematic questions in divided societies, namely, how can constitutional design prevent a very successful ethnic oriented political movement from gaining too much control and using that control to the detriment of other groups.

At first glance, one may see a resemblance between government in opposition and the approach undertaken by Lijphart within his model of consociationalism. However, while it is true that Lijphart’s model is based on a particular grouping of minority governance rules, like the grand coalition and the minority veto, it is critical to point out that minority governance rules are far more extensive in number and less drastic in scope than the ones presented in the

⁶⁰ Supra note 58 at 556

⁶¹ Supra note 58 at 548

⁶² Supra note 58 at 556

⁶³ See generally Adrian Vermeule, Submajority Rules: Forcing Accountability upon Majorities, 13 *The Journal of Political Philosophy* 74-98 (2005).

consociational model. It is better to think of government in opposition rules as a moderate means of restraining the legislative will and holding government accountable, rather than as a means of eliminating majority rule all together. However, it should not be forgotten that government in opposition rules can also be non-constructive if applied in arbitrary ways.

David Levinson and Richard Pildes have presented a number of ways that minority governance principles can be applied so as to prevent the excessive concentration of power without compromising government efficiency. They suggest institutional designs that include allowing minorities opposition days and question periods, a role in agenda setting, and standing committee chair positions; as well as setting up an independent administrative or bureaucratic branch of government whose autonomy would prevent its capture by either government or opposition parties; as well as electoral districts drawn in a nonpartisan fashion by a nonpartisan body.⁶⁴

Government in opposition rules have been used in a number of countries. For example, the so-called “Seven Member Rule” used in the United States empowers seven members of the House Committee on Government Operations to compel information of any executive agency.⁶⁵ Another illustrative case is the former interim constitution of South Africa which used government in opposition rules to smooth the transition out of apartheid. In the interim constitution, if a political party received at least eighty seats in the National Assembly, they were then guaranteed to have a member of the party appointed as Executive Deputy President, and any party with more than 20 seats would be entitled to representation within the cabinet.⁶⁶ Both of

⁶⁴ See generally: David J. Levinson & Richard H. Pildes, Separation of Parties, Not Powers, 119 Harvard Law Review 2311 - 2385 (2006).

⁶⁵ Supra note 58 at 569

⁶⁶ South African Interim Constitution. 1993, Section 84.; See also: Simon Cooke, “Constitutional design in Divided Societies, the Government in Opposition Approach, (2010) unpublished course paper, on file. p 5

these types of minority governance rules allow for minority parties to hold the executive accountable for the discretionary powers that it exercises, and in the case of those mentioned in South Africa, the opposition might even be able to exercise some discretionary ‘winner’ powers.

These few examples, demonstrate that there are in fact a wide variety of minority opposition rules, that can be used in an inordinately wide number of ways, and often with significant affect. It therefore stands to be reasoned that consociational or centripetal power-sharing need not be the only means of giving minorities an ability to enforce or influence government rule making. Moreover, it should also be pointed out that consociational groupings of opposition rules are not necessarily more ‘effective’ than other informal groupings. Therefore, when speaking of minority governance rules, it is important to recognize their stand alone normative and empirical benefits.

A. TYPES OF GOVERNMENT IN OPPOSITION RULES

There are a wide variety of minority governance rules that have been elaborated on by several scholarly works and all are worth considering as potential devices for power-sharing in divided societies.⁶⁷ If meaningful distinctions are to be made, it is necessary to provide a few examples of the kinds of institutional mechanisms that fragmented societies might adopt to achieve the aims of ethnic conciliation and power-sharing. The following list illustrates some of the various kinds of minority governance rules:

⁶⁷ See: Adrian Vermeule, Submajority Rules: Forcing Accountability upon Majorities, 13 *The Journal of Political Philosophy* 74-98 (2005).; See also: Adrian Vermeule, *Mechanisms of Democracy: Institutional Design Writ Small* (2007). See also: David J. Levinson & Richard H. Pildes, Separation of Parties, Not Powers, 119 *Harvard Law Review* 2311 - 2385 (2006). See also: Heather Gerken, Dissenting by Deciding, 1745 *Stanford Law review* (2005).

Within the *Legislature*, government in opposition rules might give minorities the power to: force disclosure of information on executive agencies; make use of special privileges within parliament or subcommittees; chair standing or temporary committees; force subcommittee hearings; force legislative hearings, debates, or discussions within parliament or subcommittees; control all or some of the operations of parliament or subcommittees; make use of designated days for questioning the executive; overrule or defeat motions; or make use of supermajority voting requirements.

Concerning the *executive*, government in opposition rules might include: representation in mutli-party executives coalitions; positions within advisory councils with special administrative or discretionary powers; the ability to decide or appoint ministerial positions, or ability to take part in implementation of legislation.

In reference to the *judiciary*, submajorities may have an ability to: Make or nominate, appointments to the judiciary (such as Judges or other key judicial staff); control certain operations of courts at the national or subnational levels; compel information and resources in court proceedings; obtain automatic standing to challenge constitutionality of statutes; initiate challenges to federal statutes or legislation.

V. DELIBERATIVE-FRIENDLY POWER-SHARING

This chapter presents a number of ways for utilizing minority governance rules in the context of Bosnia-Herzegovina (BiH). The proposals I present are far from comprehensive, and only partially demonstrate a few of the ways in which minority governance rules might form the basis of a deliberative power-sharing model. Nevertheless, these sketches will serve as a useful blueprint for highlighting the potential strengths and weaknesses of using government in opposition rules.

Within BiH there is wide spread discontent with the current consociational model. The two main objections that have raised have been in regard to the mutual veto which allows ethnic elites an ability to derail the decision making process.⁶⁸ The other problem has been an overbearing partial grand coalition that largely insulates politicians from accountability. There is also the fact that BiH's election laws discriminate against individuals who do not belong to one of the three ethnic identities, for election to the Presidency and House of Peoples. In short, the current model gives little incentive for elites to adopt moderate platforms but rather encourages coercive tactics like 'political blackmail' that end up inhibiting public trust, and preventing the government from operating effectively. As a result of having found little common ground, governance and policy-making in BiH has drifted into a stalemate situation where parties fail to engage in a collaborative process of reconciliation. The country goes through the motion of elections and has established some degree of peace but largely lacks consensus to achieve a common civic identity. The failure to enact policy, due to prolonged disputes, has also led to

⁶⁸ Arend Lijphart, *Democracy in Plural Societies: An Exploration* (1980). p. 24

considerable public discontent and may eventually lead to a defunct peace agreement if parties decide to resort to old hostilities.

Small scale institutional reforms will likely not solve the underlying problems with the current consociational model. This is because BiH's disfunctionality is rooted in the fact that governing institutions are molded around the three ethnic segments or entities which in turn prevent bottom-up reforms for citizen participation and accountability in government. The model I present below represents one potential alternative for restructuring competencies at the national level in a way that would allow for clearer mechanisms of decision-making between governmental layers and branches, and transforms the existing ethnic protection mechanisms into more deliberate-friendly minority governance protection mechanisms based on the requirements of reciprocity and publicity.

A. THE CORE: MULTIPLE LAYERS OF WINNING POWERS

The core aspect of deliberative power-sharing that I have in mind involves dividing the relatively finite number of governmental powers at the national level into blocs wherein a significant portion of power would be given to parties who are able to win a majority or plurality of the seats in the legislature. The remaining or secondary blocs would consist mostly of government in opposition rules.

This distribution of powers would be in keeping with the principle of majority rule, but would allow for powers to be divided into tiers (with law-making being the highest tier and procedural influence being the lowest), and then would distribute these tiers of powers to each major party or coalition within the legislature. These bundles of powers might be thought of as

layers of political influence, and would be relative to the share of support that a party or coalition gains in the electoral sphere, which would be based on some kind of proportional representation electoral system. The highest bloc would contain the powers generally possessed by most incumbent governments, and the subsequent layers would be composed mostly of different kinds of minority governance rules (as well as some substantial powers). The kinds of minority governance rules within each bloc could either be pre-negotiated between the multiple winning parties and coalitions prior to the election, or alternatively, fixed by statute or constitutional rules. These blocs would not be ethnic based but rather party based. However other ethnic protection measures would be established (see next section).

B. ETHNIC PROTECTION MEASURES

BiH's three and a half year war between the three major segments of its population has made its' population particularly vulnerable to the fear of other nationalist groups. Safeguards for ensuring the insurance and safety of each group are necessary. Enshrining ethnicity into the political sphere, in the way that had been facilitated through the Dayton peace agreement, however, is not an adequate solution to the problem. In the current system, ethnic protectionist measures are ensured through the following: 1) the territorialization of ethnic groups (entities) called cantons; 2) a tripartite presidency (partial grand coalition), entity voting within parliament, and equal representation in the judiciary; 3) A bicameral legislature where the lower chamber (the House/council of peoples) holds a veto over all legislation; 4) proportional representation in employment policy in multiple layers of state institutions.⁶⁹

⁶⁹ See Constitution of Bosnia-Herzegovina, Annex V of Dayton Peace Agreement

The problem with this current scheme is that it locks in antagonistic ethnic narratives into the current political system thereby enabling the resurrection of conflict amongst the three ethno-national groups. The result has been highly problematic and enables the distortion of democratic politics and civil society according to ethnic biases. It also reinforces discrimination in state institutions by keeping parties and political platforms tied to ethnic fears, thus promoting long-term social and political instability.

In the deliberative power-sharing model I propose, ethnic interests would be indirectly protected through the various blocs of government who have an ability to ensure public accountability of government. As mentioned previously, deliberation would be embedded in the political processes through government in opposition rules that allow for public discussion, thereby raising the level of public reasoning that would challenge the ideological basis of ethno-nationalism and promoting a common sense of civic identity.

In terms of direct ethnic protection measures, there are other mechanisms which could be instituted. For example, the current House/Council of Peoples (CoP) consisting of Bosniaks, Croats, Serbs, and Others/National Minorities, would be converted into an independent body designed to engage the public in the discussion of legislation relevant to the vital national interests of all ethnic groups. All laws that may directly or indirectly be related to the vital interests of each ethnic group (subject to the approval of the legislature) would be sent to the CoP where an informal vote for amendment or re-submission would be taken and sent back within a specified time frame.

The CoP might also call for public deliberative forums with a broad base of representatives and delegates from each segmental community, civil society organizations, party leaders, and international or regional experts who would present information on the matters

being discussed. The deliberations of the CoP would also be reviewed by the Constitutional Court to review the constitutionality of legislation.

C. ADDITIONAL ELECTORAL CONSIDERATIONS

An additional consideration, that needs attention is how the distribution of minority governance rules might change over time as a result of varying electoral outcomes. Hypothetically speaking, let us suppose that multiple blocs of winning powers have been predefined by law or negotiation, each with descending gradients of influential winning powers within each branch. Now, let us imagine a situation where a party or coalition wins a more than substantial portion of the electoral vote. Would they be able to obtain multiple blocs of winning powers? If so, what would prevent such a party from using its multiplied advantages in power in illiberal or immoderate ways? These fears are justifiable in the context of divided societies, where exclusion of certain sectors of society might lead to a relapse of old hostilities between ethnic groups. However, there are ways of avoiding such scenarios, that would involve a tactful and orderly redistribution of winning powers between majorities and minorities on a case-by-case basis.

Fore example, one approach in avoiding a situation where one party or coalition obtains an inordinately large number of powers, at the expense of smaller parties, might be to make the number of winning blocs of power dependent upon the number of parties or coalitions that emerge in the outcome of an election. This would also involve redistributing the minority governance rules within those blocs to account for the change in the number of political parties exercising those powers. And one way to avoid a situation where there might be an inordinately

large or small number of parties or coalitions, would be to institute an electoral system (preferably some form of proportional representation) that places limits on the number of political parties in the legislature, or alternatively, any greater number of parties than there are blocs would simply not have the degree of winning powers that the main parties would have. Coalitions between parties would also, out of necessity, need to be formally pre-declared and enforced through censure laws to prevent parties from deceiving voters merely for the sake of gaining a greater number of seats (thereby winning more bloc powers) within the legislature. In addition, it might make sense to have the laws which determine the distribution of powers within winning blocs predefined by special statutes, that would require a supermajority of votes to amend.

D. DELIBERATIVE NORMS

The basic assumption behind this model of power-sharing I have proposed is that if a democratically elected party is able to win support for their causes, they should be afforded an ability to ensure that those causes are reasonably considered, but it does not mean that all parties will or should have the same degree of powers. In other words, government in opposition power-sharing should operate on the assumption that it is better to have a continuum of winning powers so that opposition groups always have some degree of reasonable influence proportional to their share of the electoral vote.

This way of power-sharing would be in keeping with the requirement of reciprocity for the following reasons: 1) coercive powers of state would be divided in a mutually agreeable and tolerable way without sacrificing government efficiency; 2) it would encourage conflict

resolution by narrowing (but not eliminating) the inequality gap between powers possessed by the majority and the minorities; 3) first order preferences of parties would have to be negotiated to second-order preferences as a consequence of the division of powers thereby increasing the number of shareable goods; 4) the ability of any single group to sanction opposing groups would be reduced by the minority governance rules that prolong discussion rather than vetoing it; 5) minority governance rules that give opposition parties an ability to call for hearings or force information disclosure would ensure that public reasoning and discussion would be required for each legislative or executive action. This would also reduce tit-for-tat threats between power-full players who wish to maintain face with the electorate.

In terms of fulfilling the requirement of publicity, government in opposition power-sharing would provide the following: 1) fair hearings for discussion of would be provided by opposition parties by minority governance rules that force the governing bloc to disclose information and provide reasons for each decision made; 2) government in opposition rules would act as a barrier to corruption and insure that the self-interests of officials coincide with the general interest of all; 3) overall public scrutiny of law making would result from opposition powers to force or prolong discussion and/or force roll call voting;

There are clearly gray areas in distributing powers of government in this way, but the main advantage of this approach is that by creating multiple layers of winning bundles and apportioning them to multiple winning parties, there will always be some degree of consistency between a majority's ability to govern and the ability of opposition parties to ensure that their interests and concerns have an impact on policy making. Moreover, by designing a constitution in this way greater concern is placed on the optimization of power according to the principles of reciprocity and publicity.

The difference between the government in opposition approach and the current consociational approach in BiH is that under a consociational model a coequal status quo between ethnic groups is superimposed without the possibility of using democratic competition as a moderating force between ethno-national communities. By differentiating between layers of winning powers, and having groups compete for them, multiethnic parties might be able to obtain more popular support with moderate policies, but in the mean time ethnic groups still have the satisfaction of knowing they too will possess some governing powers if they win voters over by ethnic or regional policies. Regardless of the party makeup, the divided distribution of governing powers acts as a buffer between illiberal democrats and their ability to enact policies that fail to withstand the test of public reasonability and mutual respect for intrinsic equality.

CONCLUSION

While much of the debate on post-conflict constitutional design has centered on either consociational or centripetal power-sharing models, there has been little exploration of the kinds of normative arguments advanced by deliberative democracy that may favor using an approach to power-sharing based on government in opposition rules. These new normative and analytical observations are highly innovative and have considerable potential for bringing greater deliberation to a political processes. While each significant segment of the population would have substantial powers to influence government rule making, these powers would not, if designed properly, violate the principle of majority rule.

So, it is quite reasonable to argue that in order to satisfy the requirements of reciprocity and publicity, what is needed is a more sophisticated means of distributing coercive powers and functionalities of the state. At first glance, power-sharing arrangements based on government in opposition rules would seem to satisfy this requirement. More rigorous normative and empirical reasoning is necessary to give weight to the arguments I have presented in this thesis. However, my main objective, was merely to establish a connection between government in opposition rules and deliberative theories of democracy that had not previously been discussed within the literature. And with that goal in mind, I have tried to establish the case that greater focus and attention is needed within deliberative theories of democracy towards identifying those institutional procedures, that would be more receptive to the requirements of reciprocity and publicity. Government in opposition rules are uncharted territory for deliberative theorists but show promising potential for the institutionalization of deliberative standards in divided societies.

The other pertinent finding that is revealed by studying deliberative norms and government opposition, is the degree to which consociational institutions are out of sync with, not only the standards of deliberative democracy, but also of democratic values, namely intrinsic equality and personal autonomy. This may seem like a harsh review given the fact that the consociational model has proven somewhat successful in ending prolonged conflicts. However, democratic systems should be assessed not just in terms of their stability but also in terms of normative benefits as well. In essence, a democratic system that lacks strong normative arguments in its favor is a sufficient indicator of poor design.

In many respects the government in opposition approach to power-sharing represents a merger of the aims of the consociational and the centripetal power-sharing models. Like

consociationalism, government in opposition divides powers so as to constrain majority rule, but unlike consociationalism, the principle of majority rule is still maintained, albeit in a limited way. And like centripetalism, government in opposition favors multiethnic parties over ethnic parties, but gives greater assurance to ethnic groups who fear that their interests may be overlooked if immoderate parties come to power. Therefore, in closing, there are few reasons why government in opposition rules should not be taken more seriously amongst institutional designers. If government in opposition rules are used judiciously, deliberative theorists may find new ways of economizing winning powers, and in the process, reach the middle ground of fair reasoned political deliberation on which deliberative democracies are based.

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