

Lessons from Bosnia and Herzegovina

TRAVAILS OF THE EUROPEAN RAJ

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On 17 December 2002, Lord Paddy Ashdown, the former leader of the British Liberal Democratic Party and present High Representative in Bosnia and Herzegovina (BiH), spoke to that country's newly elected House of Representatives in Sarajevo. He told the parliamentarians that, to turn their assembly into "a modern, energetic and fiercely independent legislature accountable to the voters," they needed to start acting on the ten pledges and 69 specific commitments contained in an October 2002 legislative program entitled "Justice and Jobs." This program was the handiwork not of any Bosnian politician but of Ashdown's own Office of the High Representative (OHR). As Ashdown explained, the choice facing the deputies was not

*whether to reform. But how fast, how soon and, above all, who will drive the process of reform—you or me? I do not have the monopoly of wisdom on what is right for this country. There will always be room for compromise between us if this parliament comes up with sensible and workable solutions that push the reform agenda forward.*¹

Ashdown's speech is a striking document. It reflects an extraordinary political reality in contemporary Europe: the unlimited authority of an international mission to overrule all of the democratic institutions of a sovereign member state of the United Nations. Coming from the head of a democratization mission, it also betrays a bewildering conception of democratic politics. It is, Ashdown told the parliamentarians, "always possible, for those determined to do so, to continue to huddle

in clans, caucuses and parties, and to use the political system for the pursuit of narrow, factional interests . . . democratic institutions are always prone to that.” Indeed, Ashdown added, he used to do so himself when he was a member of Parliament in the United Kingdom. Bosnia and Herzegovina, however, cannot afford this sort of thing, because what it needs is not politics but reform, and particularly economic reform. Instead of huddling together in parties, he recommended that “every morning, each minister in each government in this country should be asking himself or herself the question ‘What can I do today to make Bosnia and Herzegovina a better place to do business?’” There are “a million things that can be done,” he added. The failure to do them reflects either a desire to obstruct or a “lack of will.” In either case, warned Ashdown, it would be incumbent upon the OHR to step in, reluctantly, to impose reform and remove obstacles—including, on occasion, politicians who resist reform. As he told Bosnia’s parliamentarians, “The more you reform, the less I will have to. The less you reform, the more I will have to.”

Six years after the end of the fighting in BiH, and despite possibly the largest amount of democratization assistance per capita ever spent in one country, the international mission to BiH has arrived at this paradoxical conclusion: What Bosnia and Herzegovina needs is not democratic domestic politics, but government by international experts. In Bosnia and Herzegovina, outsiders do more than participate in shaping the political agenda—something that has become the norm throughout Eastern Europe, as governments aspire to join the European Union. In BiH, outsiders actually *set* that agenda, *impose* it, and *punish with sanctions* those who refuse to implement it. At the center of this system is the OHR, which can interpret its own mandate and so has essentially unlimited legal powers. It can dismiss presidents, prime ministers, judges, and mayors without having to submit its decisions for review by any independent appeals body. It can veto candidates for ministerial positions without needing publicly to present any evidence for its stance. It can impose legislation and create new institutions without having to estimate the cost to Bosnian taxpayers. In fact, the OHR is not accountable to any elected institution at all. It answers to a biennial gathering of foreign ministries, the Peace Implementation Council (PIC), which it chairs and whose report it normally drafts. Its mandate is open-ended. Neither Bosnia’s recent holding of elections, judged “free and fair” by all observers, nor its admission to the Council of Europe has affected this.

Liberal Imperialism?

To an outsider who naively stumbles across them, such political arrangements bear an uncanny resemblance to a form of governance that

has long gone out of fashion—namely, that of an imperial power over its colonial possessions. Bosnia is a country where expatriates make major decisions, where key appointments must receive foreign approval, and where key reforms are enacted at the decree of international organizations. The nature of Bosnia's judicial system, the structure and number of its government ministries, and countless other elementary aspects of politics and administration down to the design of the flag are subject to the regulatory powers of the OHR and a few other international agencies. They control the commanding heights of what amounts to a system of "indirect rule."

Of course, there are obvious differences between Bosnia and the imperial colonies of the nineteenth century—chief among them the fact that Bosnia's international administration was established with the agreement of the Bosnians as part of a peace treaty. Nevertheless, the similarities of style and substance are astonishing. Vast ambitions, the fervent belief in progress, the assumption that outsiders can best interpret the true interest of a subject people—all these are hallmarks that the international administration in Bosnia shares with the British East India Company and the Utilitarian philosophers who staffed it in the early nineteenth century. When Lord William Bentinck became governor-general of India in 1828, it was to embark upon a thoroughgoing reform program inspired by liberal political economists. James Mill, who was the Company's chief executive in London, felt that the remedies to free India from stagnation were both simple and obvious: "Light taxes and good laws, nothing more is wanting for national and individual prosperity all over the globe."

There was an almost evangelical belief in progress imposed from above. Charles Trevelyan, who worked in the Company's Calcutta secretariat, was one such believer: "His mind is full of schemes of moral and political improvement, and his zeal boils over in his talk. His topics, even in courtship, are steam navigation, the education of the natives, the equalisation of the sugar duties, the substitution of the Roman for the Arabic alphabet in the Oriental language."² Substitute such topics as civil society, small- and medium-sized enterprise development, minority representation, or curriculum reform, and it becomes clear how many latter-day Trevelyans are working in Bosnia today. In Sarajevo in the early twenty-first century, as in Calcutta in the nineteenth, foreigners play the part of "benevolent despots."

Nor is it only the style of the Bosnian protectorate that echoes the liberal imperialism of the past: its philosophy too affords a host of similarities. As a member of the British Parliament from 1865 to 1868 and as a political philosopher, John Stuart Mill argued eloquently for limiting state power and establishing the primacy of democratic self-government. As chief examiner of the East India Company, however, he noted that some peoples are not able at first to sustain democracy, and might need

“a government of leading-strings” in order to help them reach “a higher state of improvement” prefatory to the attainment of self-rule.³ “The dominion of foreigners,” added Mill, might be better able than that of all but the most exceptional indigenous rulers to “clear away obstacles to improvement.”⁴

When practitioners in the field hear this imperial analogy, they typically object that it is misleading to liken what they are doing to colonialism—even to the English Utilitarian variety with its aspiration to foster eventual self-government. The issue in Bosnia, they say, is simply that democracy cannot flourish in an institutional and historical vacuum. Democratic self-government requires the institutions of a democratic state. In Bosnia—a country wracked by war and torn by ethnic and social divisions—it would have been naive to expect such institutions to emerge spontaneously. What is more, Bosnia’s ongoing legacy of suspicion and ethnic mobilization continually threatens to overwhelm the new institutions. The predicament of Bosnia, as Lord Ashdown explained in his Christmas speech, is that it is “a country running out of time,” a country that “has been on economic life-support systems for years, and those life-support systems are being switched off one by one.” The OHR must wield broad powers in order to prevent this.

So the unfamiliar outsider is left wondering: Just what is the nature of the international mission in Bosnia today? Can its extraordinary powers really be justified by reference to a near-permanent state of emergency? Does the rule of the OHR rest on assumptions that are much closer to those of the nineteenth-century English Utilitarians than today’s practitioners believe or would care to admit? And what lessons should we draw for future international missions that attempt both state-building and democratization in postconflict settings?

Unchecked Powers

For a time after the signing of the Dayton Accords in November 1995, the OHR had no power to impose anything. Its brief was to act as the Accords’ guarantor and to “facilitate” the signatories’ own efforts to implement the peace settlement. The High Representative was to fill the role of a senior, foreign politician-diplomat with enough moral weight to help settle disputes. He had no command over any military or police forces either.⁵

Until 1997, the situation in Bosnia remained unstable. Paramilitary groups terrorized parts of the country. Wartime leaders hung on and did their best to frustrate the establishment of the political institutions created under the new constitution called for by the Accords; refugees and displaced persons found their return home deliberately blocked; the weak and overmatched OHR could do little to help. By 1998, all this changed, as the OHR grew to more than 700 staffers.

The first turning point in this transformation came in May 1997, when the Peace Implementation Council authorized the OHR to stop incitations to violence broadcast on public media. In a unique, coordinated action, international peacekeeping troops seized the Republika Srpska public-television transmitter towers while the OHR demanded the resignation of the entire management board of the Bosnian Serb broadcaster.⁶ The surprising success of this intervention led the PIC to hand the OHR vast new powers in the crucial areas of institutional reform, substantial legislation, and the personnel of public office—all for the sake of implementing the peace agreement. At first, these sweeping “Bonn powers” were used sporadically (31 times in 1998) to deal with what the OHR deemed specific and concrete threats to the implementation of the peace.

Missing from the outset, however, were substantive or procedural *checks* on the use of the new powers. In a mission whose staffers were worried about potential abuses of authority by local figures, the absence of any serious thought concerning limits on the mission’s own extraordinary powers was remarkable. Before long, the Bonn powers were being used for reasons of convenience and to address such general and abstract concerns as “corruption.” The OHR shifted from arguments based on concrete threats and the absence of core institutions to asserting a general need to push reforms that Bosnian politicians—even those who enjoyed international support—were unwilling or unable to implement.

In the field of institutional reform, the slide toward expediency is best illustrated by the example of judicial reform. In 2000, the OHR imposed measures meant to help root out corrupt or partial judges and prosecutors and restore public confidence in the courts. Existing judicial appointments were to be subjected to an internationally supervised review process, and there were rigorous procedures for dismissing judges and prosecutors found to be corrupt or biased. A new international organization, the Independent Judicial Commission (IJC), with a staff of 64 and a monthly budget worth more than US\$200,000 in 2002, was established in order to oversee things.

By 2002, however, it had become clear that this reform—which relied on complaints from citizens using the court system—was not yielding satisfactory results. In the Federation of BiH that year, a total of 572 complaints resulted in 70 investigations. In Republika Srpska, the first 18 months of the reform effort witnessed a mere half-dozen complaints. Only six judges and prosecutors were dismissed in the whole country.

The OHR, acting on the advice of the IJC, decided to scrap the failed method of complaint and investigation (which, as an IJC report dryly noted, “requires that a certain amount of proof be produced to support a finding that a judge/prosecutor is not fit to hold office.”⁷) To replace it, the OHR decreed that all judges and prosecutors would have to resign and reapply for their positions. This decree placed the burden of proof

squarely on each individual applicant, and made no exception for those judges who had been promised life tenure after passing an earlier comprehensive review in 2000.

The Council of Europe argued strongly against this maneuver, insisting in an internal document that it was inappropriate “to remove from office judges already enjoying life tenure although no professional misconduct of the individual judge can be established.” It pointed out that—if evidence existed—corrupt or biased judges could already be removed through disciplinary proceedings set out in legislation imposed by the OHR. It argued against using a reappointment process as “disguised disciplinary proceedings without any of the guarantees associated with such proceedings.” It concluded that “problems have to be resolved in a constitutional and legal manner, respecting the very principles justifying the presence of the international community in BiH. If the international community is not willing to abide by its own principles when faced by major difficulties, what can we expect from local politicians?”⁸ The OHR waved such worries aside. It did not involve anyone from local ministries of justice in designing its strategy and never made its deliberations public. In an even more serious breach of the procedures established in 2000, the Bonn powers were used to immediately suspend 10 judges, one deputy minister of justice, and one prosecutor on 23 May 2002. The intimidation worked: When OHR started to implement its new reappointment scheme, hardly one judge, prosecutor, or justice minister dared raise his voice. The most ambitious and radical overhaul of any postcommunist European judiciary was thus launched, in the fifth year of the peace process, after minimal consultation and with a highly uncertain prospect of success. The Bonn powers had become instruments of bureaucratic convenience, their sweeping use justified in public on vague and general grounds, and little restrained by basic principles of individual responsibility and due process. All of this was happening, moreover, in the name of “strengthening the rule of law.”

Where Are the Red Lines?

The hazards of unrestrained power in the hands of international authorities were also evident in cases where individuals were dismissed from office for allegedly obstructing the implementation of the peace agreement. Here a turning point came in the summer of 1999, when the third High Representative, Wolfgang Petritsch, dismissed the elected Serb mayor of the small town of Drvar, Mile Marceta. For the first time, such a dismissal was not linked to a specific violation of the Peace Agreement. Marceta was a prominent, non-nationalist leader from the displaced-persons movement. He had been savagely beaten by Bosnian Croat extremists in April 1998 upon his own return to Drvar and had

become a prominent figure speaking out for multiethnic return. He had, in fact, become something of a celebrity—he spoke with Bill Clinton and Tony Blair, and received widespread public support from the international community. Ominously, he had also begun to annoy some international field officers, who resented his visibility and his impatience with their mission’s lack of progress toward securing the right of return. These officers and the Croat hard-liners began to make common cause, attacking Marceta for his supposed “administrative incompetence” and “provocative personality.” Lobbying by these officers resulted in a bizarre “arbitration award” issued by the OHR and the Bosnia mission of the Organisation for Security and Cooperation in Europe (OSCE): “The Mayor, Mile Marceta, has made a great contribution to the return of refugees and displaced people to Drvar. However, he has not been able to carry out the duty of his office on a day-to-day basis due to an incident last year in which he was physically attacked and continuing threats to his security. . . . In the interests of a functioning municipality and after careful consideration, the High Representative and [OSCE] Ambassador Barry have decided with regret to replace Mr. Marceta as Mayor.” Paradoxically, the OHR had dismissed an elected official not for blocking or ignoring the implementation of the Dayton Peace Agreement, but for trying too hard to implement it.

No alarm bells rang; no human rights organization protested; no procedures were established to prevent similar abuses in the future. Capriciousness remained a hallmark of the exercise of these powers. High Representative Carlos Westendorp removed Dragan Cavić, a leading Serb politician, in October 1998 for inciting violence against international peacekeeping troops. On his last day in office, Westendorp pardoned Cavić, who is today the president of Republika Srpska. On a single day in November, 22 officials were dismissed on a variety of grounds. In November 2000, the OHR dismissed a person who had been duly appointed as chief inspector of the Financial Police by the BiH government because this appointment, which took place a week before elections were to be held, was seen as “disrupting ongoing investigations into corruption.” The OHR produced no additional evidence than this general accusation and the individual concerned was suspended without pay and bared from taking any other post. “In Sarajevo,” said Alija Izetbegović, then a member of the three-person Bosnian collective presidency, “they remove a man, label him dishonest, do not present any proof of this, and then talk to us about human rights. . . . They want us to take their word for it.”⁹

By the end of 2002, more than a hundred individuals had been similarly dismissed. The utter lack of due process recalls a comment that Edmund Burke made regarding the summary manner in which Warren Hastings, while governor-general of the British East India Company, “tried” the Rajah of Benares:

Did he cite his culprit before a tribunal? Did he make a charge? Did he produce witnesses? These are not forms; they are parts of substantial and eternal justice. No, not a word of all this, Mr. Hastings concludes him, *in his own mind*, to be guilty, he makes this conclusion on reports, on hearsay, on appearances, on rumours, on conjectures, on presumptions; and even these never once hinted to the party, nor publicly to any human being, till the whole business was done.¹⁰

It is in the field of substantial legislation, however, that the fate of the Bonn powers has been perhaps most extraordinary of all. The original rationale for the imposition of core legislation was the inability or unwillingness of governments dominated by national parties to get such bills through parliament. When the general election of 11 November 2000 brought to power a coalition of “non-national” parties known as the Alliance for Change, some expected that the Bonn powers would no longer be required to force through legislation. The Alliance had received support from the international presence in Bosnia ranging from the relatively subtle (OSCE-funded posters urging a “Vote for Change”) to the unmistakably blunt (Ambassador Richard Holbrooke announcing during a visit that the United States would suspend all aid to Republika Srpska unless the Serbian Democratic Party was excluded from any future government). It seemed that here at last would be a government that would be allowed to take the reins of power in its own hands.

Yet on the day after the election, the OHR imposed ten pieces of legislation dealing with everything from the court system to weights and measures. Lists of additional bills were handed to incoming elected officials along with orders to pass them into law before a hundred days had passed. The antidemocratic character of these moves drew surprisingly little comment, and some in the press even welcomed such assertions of international control. On 1 December 2000, an editorial in the Sarajevo weekly *Dani* argued that “a protectorate would represent a genuine help for the democratic processes in this country, since its present political forces just deepen the economic, political, and social crisis in Bosnia and Herzegovina.” Another Bosnian commentator wrote in the daily *Oslobodjenje* that “it would be great if the winner of the elections were Wolfgang Petritsch. Of course he was not on the lists, and if he were, it is not certain how he would have done in competition with our national leaders. Fortunately, he needs no coalitions or consensus to impose packages and to work for the general well-being.”¹¹ A large part of the Bosnian establishment, it seemed, had joined the OHR in succumbing to the lure of the Bonn powers.

Democracy and Decrees

Let us pause for a moment to absorb the irony of this situation: The OHR, having just witnessed the success of its attempts to aid in the

defeat of the obstructive “national” parties, reacted to their removal not by praising democracy but by handing out a stack of peremptory decrees. And there is more: Sensing an opportunity for some political free-riding, key parties in the Alliance for Change told the OHR that they would only form a government if the OHR would agree to take charge of policies touching on some of the most controversial social and economic issues facing BiH. Haris Silajdžić’s Party for Bosnia and Herzegovina even declared in writing that it would join the government only if the OHR agreed to penalize any person or institution that obstructed change. The net result of all these machinations was as confusing to the OHR as to anyone else. As the deputy head of the OHR political department noted at the time: “It is not only the other international agencies and some embassies who would like to use the High Representative’s powers for their games, but now even local parties try to instrumentalise us against their opponents.”¹²

In March 2000, High Representative Wolfgang Petritsch, the third dignitary to hold that office, had spoken of his desire to convince both the leaders and ordinary citizens of Bosnia and Herzegovina “that this is their country, these are their problems, and that they bear the primary responsibility for sorting those problems out. We cannot do it for them—although we can and will assist.”¹³

By October 2001, Council of Ministers chairman Zlatko Lagumdžija underlined that “partnership” between the Peace Implementation Council and “its” government was not working. He protested that domestic authorities should not be held responsible when international organizations failed to get results. “Lower-ranking international officials do not like the partnership concept, as it undermines their role,” he stressed in a message to Western ambassadors, and called for the laying out of clear measures that would reveal when Bosnia had become a “normal” country no longer in need of so much close international supervision.¹⁴ Nothing has been done about his proposal.

Each successive chief of the OHR has used the Bonn powers more frequently. Westendorp (1997–99) handed down an average of four impositions a month, a figure that Petritsch (1999–2002) tripled. Paddy Ashdown, who began his tenure in May 2002, is currently imposing about 14 decisions each month. The rate has nearly tripled in annual terms as well: The year 2001 saw 54 OHR decisions, while 2002 witnessed 153 such actions. On 4 April 2002, the OHR summarily suspended every single judge and public prosecutor in the country, “pending the restructuring of the judicial system.” On 14 June 2002, the FBiH finance minister was removed on the grounds that he had failed to stand down despite *allegations* of involvement in a procurement scandal. The head of the BiH’s intelligence agency was fired without the public presentation of any evidence. As 2003 began, the PIC granted the OHR expanded powers to veto nominees for numerous posts across a wide

range of ministries and agencies. A few weeks later came word that the newly formed European Union Police Mission, which had taken over from the UN International Police Task Force, would have the power to recommend removals to the OHR.

These examples underscore the two dynamics that have characterized the international mission in Bosnia. First, there are the moving goalposts. In the early days of the protectorate, its stewards described their challenge as the establishment of law and order and basic public institutions. As those aims were met, the nationalist parties emerged as culprits in the failure of Bosnian democracy. Once they lost power, general crime and corruption (and, as occasional references since September 11 would have it, “terrorism”) became the difficulties in Bosnia. Like Proteus in the Greek myth, every time it appears to have been defeated, the problem with Bosnia changes shape.

The second dynamic has been the way in which the OHR’s powers have expanded to meet each newly defined challenge. Along a path punctuated by crises, the OHR’s autocratic powers have grown in scope and severity from nothing at all, through powers to impose sanctions and the interim laws designed to support the Dayton process, to absolute powers over an open-ended spectrum of issues. The OHR’s mission, mandate, and powers have been continually reshaped in response to changing perceptions of why Bosnia requires an OHR—which is another way of saying, why Bosnia is not deemed fit for democratic self-government.

What, then, is the true justification for the extraordinary powers that the international mission enjoys? The conditions that obtained in 1996 and the conditions that obtain today are separated by a gulf too wide to be bridged by the assertion that both represent a state of emergency that only a decisive and unquestioned authority can handle. When the High Representative today speaks of an “emergency,” he refers not to hate-filled radio broadcasts inciting violence against peacekeeping troops but rather to inefficient tax collection, the excessive regulation of private business, corruption in the public utilities, or technical drawbacks that make the court system less efficient than it otherwise might be. When he speaks of enemies of the Bosnian state, he means not armed paramilitaries committing premeditated arson but businesspeople evading sales taxes or politicians implicated in procurement scandals.

In fact, the history of the international mission in Bosnia suggests that its affinities with the British Raj in early-nineteenth-century India are more than superficial. While the Bonn powers were conceived as emergency powers to confront concrete threats to the implementation of the peace accords, they have today become the regular instruments of an open-ended attempt to develop institutions by decree. The OHR has been allowed to evolve into a latter-day version of the Utilitarians’ “vigorous despot,” assuming ever-wider responsibilities in the name

of preparing society for self-governance. Far from planting the seed of democratic politics in Bosnia's postcommunist political culture, this transformation implicitly teaches that technocratic rule at arm's length from the people is perfectly good governance after all.

This disappointing conclusion raises a further question. On the one hand, the early days of the Bosnian mission clearly demonstrated that some coercive powers were required in order to enforce the peace agreement. On the other, the introduction of these powers has led to the creation of a European Raj. Does this mean that there was an inherent contradiction between the demands of democratization and the imperatives of peace-building in an unstable environment? Or is there a way to institute extraordinary powers such that they do not expand indefinitely?

Thoughts from Machiavelli

There is a distinguished tradition in European political thought—indeed one much older than that of the English Utilitarians—which holds out hopes of a constructive answer to this question. The wellspring of this tradition is Niccolò Machiavelli's *Discourses on the First Ten Books of Titus Livy* (1517). The Florentine defender of republican government justifies the use of authoritarian means in the service of liberal ends very differently from the philosopher-kings of the East India Company. Harking back to the ancient Roman custom of nominating "dictators" (such as Cincinnatus) during crises, Machiavelli stresses that even the most stable republics (which for present purposes include the liberal democracies that have grown up since his day), let alone fragile and immature ones, are well-advised to provide in their constitutions for the temporary imposition of authoritarian rule in order to navigate periods of emergency:

[T]he institutions normally used by republics are slow in functioning. No assembly or magistrate can do everything alone. In many cases, they have to consult with one another, and to reconcile their diverse views takes time. Where there is a question of remedying a situation that will not brook delay, such a procedure is dangerous. In conclusion then, I claim that republics which, when in imminent danger, have recourse neither to a dictatorship, nor to some form of authority analogous to it, will always be ruined when some grave misfortune befalls them.¹⁵

At the same time, Machiavelli assumes a very high level of tolerance for conflict in a democracy. The bar must be set high for authoritarian intervention, since conflict is not only to be expected in a democracy, but is, in fact, essential to its strength, and "all legislation favourable to liberty is brought about by clashes" between different interests.¹⁶ Citing the example of the Roman republic, Machiavelli argues that:

Had the government of Rome been such as to bring greater tranquillity, there would have ensued this inconvenience, that it would have been weaker, owing to its having cut itself off from the source of supply which enabled it to acquire the greatness at which it arrived.¹⁷

Here, then, would seem to be a political philosophy that can square the Bosnian circle—which offers conditions under which authoritarian powers may legitimately and effectively be used for the building or preserving of democracy. What sets it apart from the Utilitarians' theory of benevolent despotism is the insistence that the power of a constitutional dictator must be limited by the specification and observance of a limit beyond which the state of emergency, on which the legitimacy of the Machiavellian dictator depends, can no longer be said to exist. While the precise location of this limit will vary from case to case, two essential principles must always be observed.

First, the red line limiting the dictator's power must be clearly articulated in terms of concrete circumstances that are objectively verifiable. The threat to democracy must be concrete and credible: armed paramilitaries, not a workers' strike; invasion by a neighboring state, not an inadequate sales tax regime. Vague and general criteria lead inexorably toward the open-endedness of the Utilitarians' civilizing imperialism, which is ultimately incompatible with the objective of democratization. Second, there must be an adequate mechanism whereby the red line can be monitored and enforced, independently of the constitutional dictator himself.

Machiavelli illustrates the application of these two principles by the example of the office of the dictator in the ancient Roman republic. Rome's normal chief executive officers were the consuls; they were elected by the Senate for one-year terms, and there were always two of them—a legacy of Rome's unhappy experience with the Tarquin monarchy, thrown off by a quasi-legendary rebellion in 510 B.C.E. A Roman dictator—in a sense a temporary monarch—was a constitutional officer, appointed by the Senate, and given emergency powers that allowed him to bypass the usual procedures of republican government in specific areas described in his terms of appointment. Moreover, the appointment was for a maximum duration of six months. If the dictator failed to stand down at the end of his term, he was automatically declared an outlaw, with the consequence that anyone was permitted to remove him without fear of prosecution.

Democratization and State-Building

Politics is not a speculative discipline. The test of political philosophy lies in practice. Thus we are bound finally to ask what all this means, both for the international mission in Bosnia and for future state-building missions elsewhere. If Machiavelli's dictator offers a feasible model

of how to combine an effective emergency response with the values of democratic governance, how can the core principle of independently enforced “red line” limits on dictatorship be applied in practice?

If progress toward democratization and the rule of law is to be restored in Bosnia, the OHR’s customary practices will have to change. Three initiatives spring directly to mind: First, the case of every dismissed official must be reviewed, and the effect of every legislative imposition must be assessed by an independent commission set up especially for the purpose, ideally by elected Bosnian legislators who might be joined by members from elected assemblies abroad such as the European Parliament or the U.S. Congress. Banning individuals for life from public employment or political office without even giving them a chance to confront the charges against them plainly violates even the most basic notions of due process and is simply unacceptable in a democratic country. Likewise, the imposition of institutions without public participation, whose costs are to be borne by Bosnian taxpayers, violates the most basic democratic link between taxation and representation.

Secondly, any dismissal power needs to be accompanied by precise rules explaining the emergency conditions under which OHR may even consider such a step. Where a domestic remedy exists (whether through the local courts or through administrative procedures), OHR interventions should be barred in principle. Finally, all the principles of good governance that apply to domestic institutions should also apply to OHR: transparency, public access to information, and a clear set of procedures available to the public.

As far as such reforms would go toward improving the system of governance that operates in Bosnia today, they would still leave unanswered the essential question: What is the legitimacy of the OHR’s powers more than six years after the end of warfare, in a country that is largely peaceful and which has just held free and fair democratic elections?

The ultimate implication of the Machiavellian argument is that the Peace Implementation Council, important donors such as the European Parliament, and Bosnian parliamentarians should establish an independent mechanism to assess whether the OHR’s Bonn powers should not be abrogated altogether. Backroom deals between international organizations jockeying over the spoils that flow from various mandates are not admissible. What is needed are public hearings, on Bosnian soil. It is the people of Bosnia, after all, who are most affected by these matters. On 25 October 2002, Bosnia’s democratic institutions were deemed mature enough for the country to be received into the Continent’s oldest club of democracies, the Council of Europe. Why then can those same institutions not be trusted to govern the country in which they exist? Can anyone explain this?

There are, finally, lessons for future international missions. The ex-

perience of Bosnia shows the ease with which a state-building mission may start out with unlimited powers to meet extraordinary circumstances and end up as an uncomfortable caricature of a Utilitarian despot. No mission should be relied upon to impose limits on itself. The Bosnian illusion, shared by a large international human rights and democratization community, has been that universal laws of power—including the well-known tendencies of institutions to pursue their self-interest, reject blame for failures, evade hard decisions, and prolong their own tenures—somehow do not apply in the case of well-intentioned international state-building missions. The Bosnian reality shows clearly, however, that such laws describe the behavior of an international mission just as accurately as that of any other public institution.

As James Madison famously wrote in *Federalist* 47, “the accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.” If men were angels, no government would be necessary; but in the real world, “ambition must be made to counteract with ambition, and opposite and rival interests must supply the defect of better motives.” The arguments of the *Federalist* and the experience of the Bosnian mission converge on the same conclusion: Any postconflict mission that aims to establish democratic governance and the rule of law must institutionalize checks and balances on the use of extraordinary powers at the very outset.

NOTES

1. The Jobs and Justice Program and the 17 December 2002 address can both be found on the OHR website at www.ohr.int.

2. Quoted in Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1997), 33.

3. John Stuart Mill, *Considerations on Representative Government* in *Utilitarianism, On Liberty and Considerations on Representative Government*, ed. H.B. Acton (London: Everyman’s Library, 1972), ch. 4.

4. John Stuart Mill, *Considerations on Representative Government*, ch. 4.

5. “The High Representative shall have no authority over the IFOR and shall not in any way interfere in the conduct of military operations or the IFOR chain of command.” (DPA, Annex 10, Article II.9).

6. This turning point and the evolution of the Bonn powers have been described in European Stability Initiative, “Bosnian Power Structures Part 2,” which can be found online at www.esiweb.org.

7. Independent Judicial Commission, “An Alternative Strategy to Verify the Competency of the Judiciary: A Re-appointment Process,” 18 December 2001, 6.

8. Council of Europe, “Comments on the ‘Discussion Paper on the Selection Process for the Interim High Judicial Council.’” These comments were produced as a

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