



***Unintended consequences of statebuilding and the management of diversity in post-conflict Kosovo***

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**Unintended consequences of statebuilding and the management of  
diversity in post-conflict Kosovo**

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Abstract:

This paper examines the adoption of a multiethnic liberal democratic model of governance in post-independence Kosovo and the dual task of statebuilding to secure unity and manage diversity. This article explains why in post-conflict and post-independence Kosovo, its domestic sovereignty and legitimisation have become conditioned by the integration, accommodation and protection of its minorities. While the existing literature has mainly focused on the shortcomings deriving from the exogenous character of statebuilding in Kosovo, this paper aims to challenge and complement this view by drawing on the ‘state-in-society’ approach developed by Joel Migdal, which highlights that the actual states have less coherence than their theoretical counterparts. Therefore, the inclusion of endogenous factors offers a deeper understanding of how the state model designed for Kosovo has been transformed and “limited” by local idiosyncrasies. The analysis of post-independence governance in Kosovo reveals the legislation-implementation gap and the varying levels of integration as well as the tensions and the unintended consequences arising from the priority to address the situation of the Serb community. Overall, this article shows that multiethnic statebuilding in Kosovo has been crucially limited by endogenous conditions and that the state-society relationship remains largely undefined.

Keywords:

Kosovo, Statebuilding, State-society Relationship, Minority Rights, Domestic Sovereignty, Management of Diversity

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### Introduction

The presence of minority groups with different ethnic, national, cultural, religious or linguistic identities within almost all contemporary societies has gradually gained more significance for both long-established and new states, particularly in post-conflict, post-communist and post-colonial contexts. Consequently, contemporary processes of state formation have included the management of diversity as a highly prioritised task in response to the historical changes in the practice and understanding of the relationship between state and society. In other words, the modern state has become more preoccupied with finding solutions for the integration, accommodation and protection of all its constituent peoples.

Through qualitative data analysis consisting of the evaluation of the constitution, laws, policy-briefs, official local and international documents, treaties, reports, political debates, conferences and, most significantly, by conducting semi-structured interviews during 8 months of fieldwork in Kosovo in 2012 and 2013, this article analyses and measures the impact of adopting a liberal-democratic state-model that aims to secure unity at the same time with accommodating diversity by looking at the process of statebuilding in post-conflict and post-independence Kosovo: Why, how and to what extent has Kosovo been able to manage diversity as part of statebuilding by adopting a multiethnic legal and institutional framework designed to integrate, accommodate and protect the ethnic minority groups within its territory?

In order to answer this complex question, one must acknowledge that the management of ethnic diversity has been a fundamental challenge for Kosovo after its break-up from Serbia in the post-conflict and post-independence context as reflected by the interplay of three core statebuilding tasks:

- 1) the development of institutions, the implementation of a legal framework (institution-building/ setting-up the constitution, legal framework, democratization) and enshrining core liberal-democratic values;
- 2) post-ethnic conflict reconciliation through legislative and institutional power-sharing arrangements designed to foster inter-ethnic cooperation and accommodation of minorities (mainly between minority Serbs and majority Albanians), and

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- 3) the generic integration and protection of all other ethnic minorities (Bosniak, Turkish, Roma, Ashkali, Egyptian, Gorani, Montenegrin and Croat communities in Kosovo).

This article reflects on the central elements of statebuilding in Kosovo and analyses some of the particularities of this multifaceted case-study, while also discussing its relevance for the general study of the increasingly symbiotic relationship between processes of state formation and the management of diversity. The first part will examine the conceptual framework that investigates why the management of diversity has become a vital part of modern liberal-democratic state-formation. The second part of this article will exemplify this by mainly looking at the twofold objective in Kosovo to secure unity and to accommodate the Serb community, representing its largest minority and politically the most difficult community to manage within the new state. This will help examine some of the key intended and unintended consequences of adopting a multiethnic constitutional/institutional framework in Kosovo, as indicated by the gap between *de jure* and *de facto* implementation and by the lack of congruence between nation and state. Altogether, this article links the case of Kosovo to Joel Migdal's conceptual view of the "limited" state (Migdal 2001) and re-emphasises the state-society relationship as the core element of building and maintaining modern liberal-democratic governance.

### **1. Management of diversity as challenge and as objective for statebuilding**

Given that the liberal-democratic (nation-state) model has become the dominant form of modern political organization of states, it is essential to understand how the mutual relationship between state and society, between rulers and subject, between institutions and people has transformed over time. Furthermore, while most Western and other long established states "are the result of centuries of context-specific social conflict, historically contingent processes and institutional learning and adaptation" (Egnell and Halden, 2013, 1), contemporary new states are limited by their little experience of building and consolidating their sovereignty, legitimacy and capacity to offer security, socio-economic development and justice within its territory and in relation to the other states on international arena.

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Consequently, the ability to manage diversity and the solutions adopted for this purpose are also very different from what long established states have been practicing. In this sense, the recognition, integration and protection of minorities have become essential features of modern liberal-democratic state-formation and even more so for contemporary post-ethnic conflict statebuilding cases, where political authority needs to be legitimized by all the constituent peoples.

Drawing on Joel Migdal's "state in society" approach (Migdal 2001), I adopt a view of the state as intrinsically embedded in society, thus reflecting the symbiotic state-society relationship confirmed by the mutual capacity to transform each other. From this perspective, the state is both the "image" of a unitary and clearly bounded political organization in control of a given territory and the "practices" of its different social actors and agencies. (Migdal 2001, 18). The state is not a fixed political entity and it can be seen as a process, as a changing form of political organization responding to the impact of society. Therefore, the analysis of the statebuilding process in Kosovo and of the impact of adopting a multiethnic liberal-democratic state model is focused on the character of the state-society link.

Moreover, one way of understanding and evaluating the progress and results of statebuilding in Kosovo is by looking at the state's ability to develop and maintain what Migdal describes as "social control", indicated by the level of compliance, participation and legitimacy awarded by the people. In this sense, given the important role of minorities in legitimising a post-conflict state, the promotion and protection of minority rights is an indicator of Kosovo's willingness and capacity to deliver essential political goods. This becomes a vital responsibility if the state has also experienced major discrimination of a certain ethnic group and/or a history of ethnic conflict, similarly to the case of Kosovo.

Furthermore, this also helps to understand Kosovo's efforts to develop domestic sovereignty, which for Stephen Krasner refers to the actual strength of a state's authority, as well as its capacity to use it effectively and secure legitimacy (Krasner 1999). Political consensus and social cohesion are considered to be essential factors that work in favour of building a steady democracy, while political disagreement and deep social division are made responsible for the instability and potential breakdown.

When trying to understand what kind of state the international community has attempted to build in Kosovo, a useful model is that of the *democratic legal authority*, which according to Richard Ponzio is "based on a belief, by the people in a

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geographically defined polity, in the legality of democratically enacted rules and the right of democratic authorities to issue commands under such rules” (Ponzio 2011, 35). If this is the objective of post-conflict statebuilding missions, then the understanding of authority is essential for the functionality of statebuilding processes. However, the “gap in conceptions of authority” (Ponzio 2011, 35) between international officials and the local population could represent the key challenge to all contemporary attempts to implement democratic legal authority in post-conflict societies.

Equally important is however not only to explore the limits of the management of plurality, but also to understand why and how this has become an essential task for contemporary statebuilding. In the contexts of post-colonial, post-communist and post-conflict statebuilding, diverse societies have been divided by the existence of different ethnic, national, cultural, religious or linguistic identities. State formation in these cases have been often a response to the intersection or clash between ethno-national diversity and the spread of the modern Western state model. Consequently, the new “polities” have experienced the challenge of internal disputes over establishing what the identity of the political community and their members should be. This state legitimacy issue has been described by Linz and Stepan (1996) as the *stateness problem*, originating in the relationship between the state, the nation and democracy and the difficulties in establishing territorial boundaries and the conditions of citizenship.

**Table 1. A typology of State-, Nation- and Democracy-building Strategies in Multinational Polities** (Linz and Stepan 1996, 429)

Nation-building Strategies: Ideology toward Demos/Nation Relationship	Statebuilding Strategies toward Non-national Minority or Minorities	
	Exclusionary Strategy	Inclusionary Strategy
Demos and nation should be the same	Type I Expel or at least systematically encourage the “exit” option	Type III Make major efforts to assimilate minorities into national culture a give no special recognition to minority political or cultural rights
Demos and nation can be different	Type II Isolate from political process by granting civil liberties but no political rights and thus discouraging “voice” option	Type IV Make major efforts to accommodate minorities by crafting a series of political and civil arrangements that recognize minority rights

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As the table above shows, while nationalism offers the possibility of defining the demos, this may not include the entire population or all the constituent peoples of the state. When “stateness” and “nationness” overlap, building democracy and legitimate governance is expected to occur more easily, while when they are not in congruity, the process is likely to be more challenging and unstable. For instance, democratization in post-communist countries like Poland, Czech Republic or Hungary are relevant example of the first situation, whereas the conflicts and instability of states from former Yugoslavia illustrate “the severe consequences for states beset by contentious multinationalism and weak citizen-institutional loyalties” (Wilmer 2006, 16).

The management of diversity has become both a challenge and an objective for contemporary processes of state formation. On the one hand, it has been a challenge primarily because it complicates the task to secure unity for the liberal-democratic nation-state model, built around the norms of popular sovereignty, social solidarity and reliance on a dominant nation. On the other hand, it has become a key objective for statebuilding not only because of the social-demographic and political changes of the 20<sup>th</sup> century, but also because of the increasing number of internal (ethnic) divisions, conflicts and civil wars. These issues have characterized the ex-colonial and ex-communist societies aiming to adopt the liberal state-model but struggling to synchronise the (proposed) state-society relationship with the ground realities.

### **2. Post-conflict statebuilding in Kosovo**

Kosovo has been the topic of many international controversies and academic debates over the politics of interventionism, international law, ethnic cleansing, peacebuilding and statebuilding, the role of international administrators in post-conflict states, secessionism and the right to self-determination and, most recently, the problems around the 2008 unilateral declaration of independence. Kosovo has therefore declared itself an independent state nine years after the 1999 conflict, but the lack of unanimous international recognition continues to divide the international community on the status and future of the province. This situation is particularly important given that the international community has been involved in all stages of Kosovo’s development from intervention (the role of the North Atlantic Treaty Organization (NATO)), peacebuilding/statebuilding (the administration of Kosovo by UNMIK and by the European Union, but also the involvement of other organizations

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like OSCE and international donors) and post-independence (the continuing primary role of the EU through the Europeanization process and the EULEX mission).

In these circumstances, Kosovo has been aiming to foster its international recognition and defend its status while also building-up its domestic sovereignty and continuing its transition to a sustainable liberal-democracy. In other words, in its post-2008 quest to meet international/EU standards and construct stable, functional and legitimate democratic governance, Kosovo continues to have a highly contested statehood and even lacks the support of five EU member states.

Challenges for contemporary post-conflict statebuilding practices have been generally studied within the critique of liberal interventionism (Caplan 2005; Chandler 2004 & 2010; Clapham 1996; Hehir 2010; Ignatieff 2003; Jackson 1990 and 2007; Paris 1997; Richmond and Franks 2009; Samuels and Einsiedel 2004; Yannis 2001; Zaum 2007). This literature has been focused on the imposing character of international involvement in peacekeeping and post-conflict administration such as the United Nations-led missions in Bosnia-Herzegovina, Kosovo, East Timor, South Sudan or Afghanistan.

From this perspective, the international involvement in Kosovo has not only started with a controversial humanitarian intervention, but it has also imposed a multiethnic state model while administering the post-conflict reconstruction of the province. This suggests that the international community has also become highly responsible for the flaws of statebuilding in Kosovo and for creating a certain degree of external dependency in the detriment of democratisation and domestic legitimacy. International administration has been identified as the key problem because it installs an external source of legitimacy and undermines domestic sovereignty.

The same literature underlines the non-democratic and illiberal character of liberal interventionism in its paradoxical quest to spread liberal-democratic ideals through statebuilding missions. At the same time, this criticism also questions the self-proclaimed universality of an externally generated political model. The identification of the flaws of international statebuilding is not however always supported by endogenous, case-specific and convincing explanations for the multifaceted causes of why states fail, for instance, to develop sustainable democratic governance or to achieve long-term reconciliation and inter-ethnic cooperation.

Moreover, in the case of Kosovo its unresolved status is often over-emphasised and used to explain almost all deficiencies of the statebuilding process, despite the



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fact that scholars (Tansey 2007; Caspersen 2012; Coggins 2014) have observed that processes of democratic transition and institution-building are not unique to established states and can occur outside the state system as confirmed by the post-1999 *standards before status* approach in Kosovo. This highlights the dynamic character of the state under the impact of a multitude of external and internal processes. Furthermore, Krasner's taxonomy of sovereignty is also relevant here because despite the absence of international/legal sovereignty, Kosovo has developed domestic sovereignty.

This paper argues that a competing literature (Kostovicova 2005; Kostovicova and Bojicic-Dzelilovic 2009) has been emerging with the aim of stimulating more consistent explanations of state weakness. This can be done by highlighting the legacy of the past in relation to the absence of social cohesion and a strong state-society relationship. This theoretical comparison shows the importance of identifying valid causes for malfunctions in statebuilding by complementing exogenous explanations with endogenous factors. Liberal-democratic measures and standards that define contemporary statebuilding are implemented improperly not necessarily because they are imposed and given a different character, but because they are in conflict with the internal fracture between the state and its population and because of the incompatibility between institutional/legal solutions and case-specific circumstances.

Indeed, Kosovo represents a unique endeavour and a very ambitious case of statebuilding not just because of its internationally contested statehood (Ker-Lindsay 2009; Hehir 2010; Weller 2009), the circumstances of the 1999 war and the subsequent international administration, but also because of the impact of the dual legacy of communism and conflict. This paper thus explores why the literature on statebuilding in Kosovo has generally not been focusing enough on the role of endogenous factors (Kostovicova and Bojicic-Dzelilovic 2013).

It is paramount to explore whether endogenous challenges may obstruct the aims of building a multiethnic liberal-democratic state capable of securing unity and managing a plural society. In this sense, the “the twin and deeply intertwined dynamics of post-Communist and post-conflict transition” (Kostovicova and Bojicic-Dzelilovic 2013, 13) have simultaneously complicated the state-society relationship in Kosovo and the externally-led efforts to establish a multiethnic polity. This dual legacy has been characterised by illiberal practices and understanding of governance, substate

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forms of authority, ethnic, social and political fragmentation, the absence of national cohesion, economic dependency, institutional weakness and security issues. Following on the state-in-society approach developed by Migdal (2001), it can also be affirmed that:

In reality the modern state is both an abstract and coercive macro-structure and a network of interdependent social actions in everyday life. Modern statehood consists of two dimensions: historically developed and relatively stable institutional structures, and culturally defined social processes. (Dietrich 2008, 37-38)

The interplay between exogenous and endogenous factors indicate why a particular type of statebuilding has been developed in the contemporary context of post-conflict societies, which in the case of Kosovo has a multiethnic political-institutional model at the forefront of the process. Nevertheless, this interplay also helps to analyse the difference between theory and practice, between legislation and implementation and between intended and unintended consequences of adopting and implementing a particular state model.

Post-conflict statebuilding in Kosovo has been an externally-driven multifaceted process aiming to build peace, stabilise and reconcile ethnic tensions and to develop at the same time a functional liberal-democratic form of governance. Therefore, the immediate goal was to pacify the relations between Albanians and Serbs while keeping the province under the administration of the international community (UNMIK mission) until its future legal status would be resolved. Maintaining peace and achieving sustainable reconciliation has become part of the liberal statebuilding process. In Kosovo, this has consisted of adopting and implementing of a multiethnic liberal state-model aiming to develop the capacity to secure unity, perform the main tasks of a functional state and also manage ethnic diversity through a set of far-reaching legal and institutional framework for the integration, accommodation and protection of minorities.

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### 3. Managing diversity in Kosovo: legislation vs. ground reality

We declare Kosovo to be a democratic, secular and multiethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.

(Declaration of Independence, *Assembly of Kosovo*, 17 February 2008).

For the purpose of this paper, a minority is a group or a community that identifies itself as different by virtue of a shared ethnic, national, religious, cultural, linguistic or communal identity and has historically been marginalized by policies and practices of a state, and normally also constitutes a numerical minority within a state with a majority group. It is therefore crucial for the study of the management of plurality during statebuilding to establish the official position of the state as regards ethnic diversity and the relationship between majority and minority groups.

The domestic context of post-war Kosovo has been challenging for the Kosovo Albanians' aim to assume their new status as the majority group and build a new state, but also for the Kosovo Serbs and the other smaller minorities affected by the conflict and by the secession from Serbia. In this divided and confusing environment, trying to construct and secure unity has been challenging. However, Kosovo's path to independence and sustainable statebuilding has required stability and the construction of social cohesion. These domestic factors have made it very difficult for Kosovo to pursue the twofold task of integrating its citizens and promoting multiethnicity concomitantly.

One of the conditions for Kosovo's partially recognized independence has been to show real and full commitment to respect and include Kosovo Serbs and the other minorities in the governance of the new state (Perritt 2009, 75). Furthermore, while achieving full international recognition (legal sovereignty) may remain the most difficult task for Kosovo, becoming capable of managing its minorities and, thus, protecting all its citizens equally regardless of their identity is a feature of functional post-ethnic conflict states (domestic sovereignty). The legitimacy of its independence and authority may depend more on a real and comprehensive inclusion of all communities.

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As Migdal (2001) suggests, the lack of social solidarity/cohesion represents a threat to building legitimacy and domestic sovereignty, and, in the case of Kosovo, it may be seen as a source of permanent state weakness. Furthermore, the observations made in relation to Kosovo's policies for minority rights contribute to the broader discussion of how in the contexts of post-colonialism, post-communism and post-conflict statebuilding, the ideal state model has been shaped by the particularities and requirements of national, ethnic, cultural, religious or linguistic diversity.

After the declaration of independence on the 17 February 2008, the Constitution was promulgated and defined the Republic of Kosovo an independent, sovereign, democratic, unique and indivisible state and as a **“multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions”** (Article 3(1)). Given the impact of the interplay between the *de jure* and *de facto* management of diversity in Kosovo, it is important to highlight from the start that declaring Kosovo a multiethnic society can be considered an overestimation of the ethnic diversity of its population. According to the 2011 census (Kosovo Agency of Statistics), Kosovo has approximately 1.7 million citizens, of which the Albanian majority represent approximately 93% of the entire population while the rest of 7% consists of Serb, Bosniak, Turkish, Gorani, Montenegrin, Croat and Roma, Ashkali, and Egyptian communities.<sup>1</sup>

In concrete terms, independent Kosovo was from the start a *de jure* multiethnic society with a *de facto* largely homogenous society. At the same time, even if the emphasis of the constitution is on establishing a multiethnic civic based Kosovan identity, the formulation “Albanian and other Communities” differentiates the majority community, the Albanians, from the rest of communities, the minorities. A similar formulation that is used within several laws and other official documents singles out the Serbian community from “the other communities”, therefore suggesting that the risk of installing a hierarchal order (Krasniqi, 2013) of communities in Kosovo is both of *de jure* and *de facto* nature. Moreover, the multiethnic republican model adopted in Kosovo has required the extensive accommodation of ethnic diversity under the umbrella of an ethnically-neutral civic Kosovan identity. However, in the absence

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<sup>1</sup> In the context of the boycott of the census by Serbs in northern Kosovo, the data has not been seen as reliable. However, all estimates indicate the Albanian population at about 90%.

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of a strong emotional attachment to the Kosovan identity, political homogenisation through the construction of a civic nation on a predominantly rational basis becomes much more challenging (Guibernau 2013, 6).

### **Strategic terminology: “Community” not “Minority” rights**

The Law on Communities in Kosovo provides a general definition of communities as:

national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority. These groups are Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani and other communities. Members of the community in the majority in the Republic of Kosovo as a whole who are not in the majority in a given municipality shall also be entitled to enjoy the rights listed in this law.

This definition gives the notion of “community” a clear meaning as the equivalent of “minority” and, in consequence, differs from the text of the Constitution that includes the Albanians in the category by saying that communities are: “inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo” (Chapter III, Art. 57). Moreover, by using this general understanding of “communities”, the Constitution further divides the notion in two categories: “non-majority communities” and “majority community” (Albanians), which are both also present in the constitutional text and in other laws and official documents of Kosovo.

These inconsistencies of using the term “community” instead of “minority” and of also giving different definitions derive from the intention to avoid referring to any group as minorities (Andelkovic 2012). This came as a consequence of Kosovo’s unsettled status under Resolution 1244 and the symbolically important divisions of the past between “constitutive and/or non-constitutive nations” (KIPRED 2006, 6). Resolution 1244 preserves the sovereignty of the Federal Republic of Yugoslavia (FRY), suggesting that Kosovo Serbs identify themselves as the majority community in the general context of FRY. At the same time, Kosovo Albanians reject any legal connection with FRY and therefore define themselves as a majority within Kosovo (KIPRED 2006).

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It is also important to say that, initially, both the Constitution and the Law on Communities mentioned only 7 minorities in Kosovo (Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani) by omitting the Montenegrin and the Croatian communities. As a result, until recently these two minorities were not protected by the Kosovo legislation in the post-independence period and, for instance, were not awarded guaranteed seats in the parliament and were not included as ethnic categories in the 2011 Census. After three years of lobbying and discussion on this issue (Balkans Insight 2012), Kosovo authorities agreed to include Montenegrin and Croatian as minority communities and amended the Law on Communities on December 2011. However, the two communities have remained unrepresented in the Assembly during the last electoral mandate.

### **Fundamental constitutional provisions**

The Constitution of Kosovo not only has a chapter on minority rights but also includes special guarantees for participation of non-majority communities in the decision-making process at all levels of governance. To start with, **the power-sharing** tools that have been included in Kosovo's constitution can be identified as follows: grand coalition government (ministers from minority groups must be included in the executive; role of community consultative bodies), proportionality (composition of parliament and the judiciary, electoral system, local government and employment in public administration and state-owned companies), veto rights (right to veto on constitutional amendment procedures and on the adoption of vital laws and amendment procedures) and segmental autonomy (special cultural autonomy and protection for minorities as regards language, religion, education, media and symbols).

The most visible political rights of representation are therefore the guaranteed seats in the Assembly and the less visible is their participation within other institutions (vice-president, deputy-mayor and deputy-chair or deputy-speaker in local assemblies). At the central level, Kosovo Serbs have hold several important government offices, including a deputy prime minister, three ministerial and two deputy ministerial posts. Moreover, the director of the Prime Minister's Office of Communities Affairs (OCA) has been a Serb, while five others have been appointed to the Consultative Council for Communities (CCC), the advisory body operating under the auspices of the President of Kosovo. (OSCE 2011, 33)

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Furthermore, Article 58 of the Constitution describes the **proactive responsibilities** of the state to help minority groups protect and promote their identities, to support reconciliation, to develop and enforce anti-discrimination measures, to promote socio-economic, political and cultural equality, to preserve cultural and religious heritage of all communities and to ensure that all communities and their members exercise their constitutional rights.

These responsibilities highlight the positive role that must be taken by state institutions and bodies not only to avoid discrimination but also to achieve equality among communities. Moreover, “the Republic of Kosovo shall refrain from policies or practices aimed at assimilation of persons belonging to Communities against their will, and shall protect these persons from any action aimed at such assimilation” (CCC website). Therefore, not only the Kosovo Constitution makes the state responsible and proactive in the promotion and protection of minorities, but it also specifies that policies or practices of assimilation are outlawed and against the multiethnic character of Kosovo.

In spite of significant criticism from both supporters and opponents of Kosovo’s independence (Personal Interviews 2012/2013), the provisions included in the CSP document remained the cornerstone of the multiethnic democratic model of governance installed in Kosovo. Therefore, in addition to the constitutional framework, by signing several fundamental laws and especially the Law on the Protection and Promotion of the Rights of Communities and their Members, the Kosovo government has constructed a solid system of rights that “should meet Kosovo’s international commitments and requirements for European integration, as long as they are effectively implemented” (ECMI 2009, 16).

Kosovo has developed a complex system for minority rights protection that even though it was not envisaged by all its minority communities, it was necessary for dealing with the new position of Serbs in Kosovo (Personal Interviews 2012 and 2013). From this point of view, Kosovo was defined as a multiethnic society so as to help with establishing power-sharing institutions and to give ethnic autonomy and representation as part of the international peace-building toolbox. Nevertheless, all these measures will have a great impact on the long-term as they are also designed to help finalise the status of Kosovo (Haziri 2012).

#### 4. Post-independence opportunities and challenges for the integration of Serbs

This section aims to explain how the adoption of the Constitution of Kosovo and the implementation of key legislation on minority rights protection have influenced the integration of the Serb community in the post-independence context. The focus on promoting a multiethnic democratic model of governance with important consociational elements of power-sharing for Kosovo has pushed reforms to integrate minority communities. In the context of building a multiethnic Kosovo through legal, institutional and administrative reforms, a dilemma discussed here is regarding the balance between *de jure* measures for the integration of minorities with focus on Kosovo Serbs and the *de facto* implementation process targeting political, socio-economic, legal and cultural rights of minorities.

Firstly, regarding the issue of commitment to foster the integration and implementation of minority rights, the level of understanding and the acceptance of the new context by both the majority Albanians and the Serbs (Personal Interviews with Serbian/Albanian representatives, 2012) indicates that Kosovo's official pledge to multiethnicity has many limitations too.

Secondly, the institutional capacity to deal with the integration and accommodation of minorities plays a fundamental role in helping Serbs to assume their rights and integrate as equal political partners. However, this has not been fully developed and Kosovo has a poor capacity to support its constitutional commitments to the management of diversity given its overall severe socio-economic problems and its limited experience as a new state (ICG report 2012 AND Personal Interviews 2012/2013).

After the war and in the new post-independence context, the position of Kosovo Serbs has remained dependent on Serbia. The installation of the parallel education, health, hospital and police systems in northern Kosovo close to the Serbian border and in enclaves where Serbs are a majority has been of great support for the Serb community (ICG report 2012, 16). However, this undermines the authority of Kosovo and as long as it cannot replace and compete with the parallel system, the integration of Serbs can remain unsustainable.

On-going language barriers and separate Albanian and Serbian health and education systems are negative factors for long-term inter-ethnic dialogue and



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reconciliation, with the reality being that after the declaration of independence, many members of the Kosovo Serb community continue to live separately from the majority (Personal Interviews 2012/2013). This is the dominant view among Kosovo Serbs as regards the tools for protecting and integrating them in the post-independence context and as one civil society representative observes:

The provisions for minorities can also be seen from a different angle. After the war, Serbs have been actually become isolated in in Kosovo and more or less forced to leave in small enclaves that are now being turned into municipalities (Personal Interview with Serb CSO representative 2013).

At the same time, Serbia has continued to reject Kosovo's independence and has been supporting parallel institutions, which consequently undermine the Kosovo government's ability to develop inclusive democratic institutions and persuade Kosovo Serbs to legitimise its authority (ICG report 2012). While in some regions the presence of parallel institutions is mostly symbolic, in others, they deliver the bulk of the local governance and services required by the Kosovo Serb community, including administration, education and health.

However, the post-2008 transfer of competencies to the local level and the creation of new Kosovo municipalities with Serb majority has reduced their influence (ECMI 2013). In response, the Government of Serbia has begun to streamline and restructure its institutions and service provision in Kosovo. Unlike the Serbs in the north who live in a mono-ethnic environment, a growing number of Serbs in the south have been more willing to cooperate with Pristina, pending concrete and tangible measures of good will are offered by the Kosovo Government and the international community. The formula that some Serbs have adopted has been to respect the laws of Kosovo without accepting its full independence and to sustain decentralization as a vital process that will ensure their future in Kosovo (ICG report 2013). As many Serb political and civil society representatives in Kosovo highlight, it is essential that Kosovo's leaders show openness and understanding to this political evolution.

All these issues have been particularly significant in the context of the Belgrade-Pristina dialogue, which began after the International Court of Justice (ICJ) concluded in July 2010 that Kosovo's unilateral declaration "did not violate any applicable rule of international law" (International Court of Justice 2010: 53). The negotiations mediated by the EU have been addressing the normalisation of the relations between

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Serbia and Kosovo as regards regional cooperation, freedom of movement, rule of law and economic development.

Kosovo and Serbia reached an EU brokered agreement for the normalisation of relations on 19 April 2013 in Brussels. The agreement had 15 points and focused on the establishment of the Association/Community of Serb municipalities, integration of Serb justice and security structures into Kosovo's state apparatus, and the management of municipal elections. Moreover, the two parts agreed that neither side "will block, or encourage others to block, the other side's progress in their respective EU path" (First Agreement 2013). Despite this important point addressing the mutual respect vis-à-vis the common goal of European integration, the text of the agreement is ambiguous and has made its implementation a rather difficult process and subject to the interests of both sides:

For Pristina the Agreement means that the territorial integrity of Kosovo has been secured. So called "parallel structures" are abolished and North Kosovo and its Serbian population will be fully integrated according to the Kosovar constitution.

Belgrade reads the Agreement differently: In its view a new ethnic-Serbian institution will be created, which for the first time is recognized by Pristina and the EU (Ernst 2014, 123)

As the next section of this article will show, one particular impact of the Dialogue and the Brussels Agreement has been on the actual participation of Serbs in Kosovo politics. While both Serbia and Kosovo aspire EU membership and seek to win EU appeal in the mediation process (Todoric and Malazogu 2011: 12), the process of dialogue has had a paradoxical effect by strengthening the influence of Belgrade over the Serb minority instead of including Serbs within Kosovo's structures so as to legitimise Pristina's authority. This will be illustrated by analysing the volatile character of the political participation and representation of Kosovo Serbs since the 2008 declaration of independence.

### **Serbian *de jure* vs. *de facto* participation within Kosovo politics**

Kosovo is a parliamentary democracy and according the Constitution, and repeated in the Law on General elections, its unicameral Assembly has 120 deputies. Representatives of minority communities have guaranteed a number of 20 seats. Ten of the guaranteed seats are for Kosovo Serbs and ten for the other communities. Minority communities are also guaranteed one of five deputy presidents in the Assembly presidency.

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For the first two electoral mandates upon the adoption of the constitution, minorities in Kosovo had an additional advantage of also participating in the distribution of the 100 seats outside the guaranteed ones.<sup>2</sup> Moreover, the 5% threshold necessary for regular political parties did not apply to minority parties, which helped the Independent Liberal Party (SLS) to become part of the governing coalition despite the fact that they received only 2.05% of the votes in the elections (KIPRED 2011). Therefore, because of the set-aside seat system for minority political parties, the 2010 general elections allowed Serb parties to win 3 additional regular seats, which meant that between 2010 and 2014 the Assembly had 13 Serb deputies representing 3 parties, 8 of which were from SLS.

Overall, the minority political parties had together 25 out of 120 seats in the parliament, representing 20% of the total number of deputies and making them the second biggest parliamentary caucus. This opportunity for minority parties to have such strong decision-making power is even more noteworthy given that in 2010 they won the 25 seats with approximately only 55,000 votes altogether while, for example, the Democratic League of Kosovo (LDK) Albanian party came second in the election by receiving around 170,000 votes and won 27 seats (ECMI 2011).

In the post-independence immediate context, the Serb caucus in the Kosovo Assembly was mainly divided between the pro-government Independent Liberal Party (Samostalna Liberalna Stranka, SLS) and opposition United Serb List (Jedinstvena srpska lista, JSL). At that time, the international presence in Kosovo was seeking to support a new generation of Serb political elites and SLS focused on adapting to the new context and on what would be more beneficial for the Serb community rather than focusing on the political problems around Kosovo's unsettled status (ICG 2012, 7). However, their attitude was perceived by Belgrade and its parallel institutions in Kosovo as an act of betrayal (Personal Interviews with SLS politicians 2012). As a result, SLS had little support in the beginning and had to face opposition even from the Serb community in South Kosovo.

Nonetheless, one section of the Serb community in Kosovo understood the fact that the post-conflict and post-independence context had inevitably changed their status and their position within Kosovo. Thus, SLS became the “voice” of the Serbs who did not want to or simply could not depart and who realized that remaining in

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<sup>2</sup> Article 148, Constitution of the Republic of Kosovo, p.57.

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total opposition and silent within Kosovo politics would have been detrimental for themselves (Personal interviews with Serb politicians and civil society representatives 2012/2013). The growing support for SLS was evidenced by the number of votes received in 2010 (14,352) compared to 2007 when SLS participated in elections for the first time and managed to get only 855 votes (Kosovo Central Electoral Commission CEC). The 2010 results made SLS, together with The New Kosova Alliance (AKR) the fifth biggest party in the Assembly and the largest minority party.

Furthermore, after the 2010 elections SLS had two ministers in the government, a great reward for SLS joining the governing coalition as holding such important positions exceeded constitutional rights.<sup>3</sup>

### **The 2013 and 2014 Elections: A new dominant coalition for the Serbs**

A turning point for the political participation and representation of Serbs in Kosovo was the November 2013 Local Elections. Of the total 103 political entities that participated in the elections, there were 27 representing the Serb community (Brajshori and Tërnavë 2013, 8).

These elections came five years after the declaration of independence and, for the first time, they covered the whole territory of Kosovo, including therefore the four Serb-majority municipalities in the northern part of the country. Moreover, in the context of the agreement reached between Belgrade and Pristina in April 2013, Serbia supported and encouraged the participation of Serbs in these local elections with the general aim of securing control at the local level.

A crucial change also came with the entrance in the elections of a new Serb political entity, the Civic Initiative “Srpska” (GIS), created and financed by Belgrade and bringing together the Serb parties in Kosovo linked with the Serbian government (Deda 2013, 3). The support of Belgrade for these elections proved to have a major impact on mobilizing the Serb minority in Kosovo as shown by the high turnout rates: over 50% on average for the Serb municipalities, clearly over the Kosovo average turnout of 46% in the first round (ECMI 2013).

The results confirmed a strong dominance for the newcomer GIS Srpska as it won 9 out of 10 municipalities in mayoral elections and a total of 40% of the seats held

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<sup>3</sup> The constitution says that the government shall have a minimum of two non-Albanian ministers (one Serb and one from another minority community) and four minority deputy ministers (two Serb and two from other non-majority communities).

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by Serb representatives in municipal assemblies throughout Kosovo (Tërnavë 2014, 8). Therefore, this victory marginalized SLS and the other Serb parties, while also predicting that GIS Srpska would “become the dominant political force of Kosovo Serbs in the 2014 national elections and most likely the third political force represented in Kosovo Assembly (through the guaranteed minority seats) and the next Serb party in the future government of Kosovo. This will make Serbia a de-facto governing partner of the next government of Kosovo” (Deda 2013, 3).

The 2013 elections suggested the development of a new political landscape for the Kosovo Serbs and a departure from the pro-government strategy materialized by the presence of SLS in the governing coalition with the Albanian majority parties. The new dominant political representation for Kosovo Serbs at the local level may manifest in the form of a more radical policy in its relationship with the Pristina authorities as suggested, for instance, by the declaration of the elected mayor of North Mitrovica, Krstimir Pantić: “We have won nine municipalities where Serb citizens will never recognize the independence of Kosovo” (ECMI 2013).

As regards the 2014 parliamentary elections, the impact of the “normalisation” of the relations between Kosovo and Serbia (Guzina and Marijan 2014) was again visible in the participation of northern Serb municipalities and in the almost doubled number of recorded votes among Kosovo Serbs compared to the 2010 elections (from 24,138 to 46,663) (ECMI 2014, 10). Moreover, as anticipated, the Belgrade-backed G.I. Srpska coalition won the majority of votes from the Serbian community to replace the SLS’ supremacy (8 out of 14 Serb seats between 2010-2014) and gaining 9 of the 10 guaranteed seats for Kosovo Serbs in the Assembly.<sup>4</sup>

Lastly, what needs to be mentioned about the 2014 elections results is that the main Albanian party, PDK, faced great difficulties in trying to form again a new government under its command. Even though the Serbs MPs still represent a potential important parliamentary group capable of supporting a future coalition, the new political environment and the clear statement made by the Belgrade-oriented Srpska that it would not join an eventual cabinet with the nationalist Vetëvendosje (Self-Determination Movement) (B92 news 2014), has made the future role of the community’s political representatives much more difficult to predict.

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<sup>4</sup> The 2014 elections introduced the Guaranteed Seats System for the representation of minorities in the Assembly, replacing the Reserved Seats System, which was applied in previous national elections.

### **(In)effectiveness of strong minority representation**

By law, the extensive rights and powers that representatives of Kosovo Serbs and other minorities have been awarded give them the consociational option to block important government actions that may undermine their interests. In reality, the situation has been more modest as minority representatives have lacked the political will to put pressure on the central institutions because they depended on the support of the Albanian main parties and they did not want to jeopardise their positions or create problems for the community they have represented (Personal Interviews with CSO representatives and Kosovo MPs 2012/2013). Moreover, as regards the consociational character of the executive, despite minority representation at the highest level of governance, the system is weak. If ministers from minority communities are MPs, then they do not necessarily require majority support from minority MPs, meaning that “the system is more concerned with minority representation than with minority consent” (Bieber 2013, 138).

In order for minorities to represent a stronger and effective political force, there is need for more consensus among their representatives. This is difficult to achieve and maintain given that opportunism or self-interest can be exploited by the main parties to place different groups or politicians against each other. Although the public political debate is focused on policies and governmental strategies, voters of all communities in Kosovo believe that their political representatives are fighting to prolong their stay in power to maximize their own private gains at the expense of their constituencies (UNDP Pulse Reports 2010-2014).

In this sense, the post-2010 government coalition depended on the votes of minority representatives who, despite constantly complaining about the position of their communities (Personal Interviews with minority MPs 2012/2013), they have not entirely used this political leverage to advance their influence and become more active in spite of having the institutional tools to protect their rights.<sup>5</sup> Instead, they continued to be fragmented and in competition with their political rivals:

Infighting, mutual accusations of corruption and cronyism and jockeying for better positions with Belgrade, Pristina and key embassies are the main features of Serb politics [...] Many in the

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<sup>5</sup> This behaviour was confirmed by most NGOs working with minority rights protection in Kosovo, Personal Interviews 2012/2013, Pristina, Kosovo.

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Serb population are left disillusioned, while youth interested in social, economic and political development finds a home in the growing NGO sector (ICG 2012, 8).

At the same time, the growing participation of Kosovo Serbs in local and national elections has been a positive development for building the legitimacy of both their political representatives and the institutions these work for. This positive trend nonetheless challenges the argument that the only obstacle to integration is the lack of will that characterizes the Serb community. As Briscoe and Price (2011, 33) put it, “[t]here is no shortage of other institutions, provisions and procedures designed to safeguard and promote minority participation. The challenge is getting ethnic Serbs to use the mechanisms and participate in the political process”.

The idea of convincing Serbs to use political mechanisms is not only about how much willingness there is within the community but also about the capacity of Kosovo Serbs to actually take advantage of all their constitutional privileges that reach far beyond using elections to gain strong political representation. However, even in the case of total participation, the *de facto* integration and acceptance of the Serbs would continue to be a challenge as long as the general position and perception of the community does not include recognition of Kosovo’s new status.

### **5. Intended and unintended consequences of statebuilding**

As this article has suggested, a first challenge for the integration of Kosovo Serbs derives from the community’s will and capacity to understand, accept and assume their rights (Personal Interviews with Serb MPs 2012/2013). A second challenge for the Kosovo Serbs has been that the central and local institutions have not been willing to actively encourage and support them. Besides adopting the current constitutional framework, Kosovo institutions also need to prove long-term commitment and build capacity to sustain its minorities. A third challenge is the sustainability of the cooperation between Serbs and Albanians at both elite and community levels, as the political cooperation build so far is contested not only by the Albanian opposition and the civil society but also by the Serb community itself (Personal Interviews with Serb MPs 2012/2013). These issues highlight not only the Kosovo-specific endogenous “gap in conceptions of authority” (Ponzio 2011, 35), but also some of the chief difficulties in synchronising “stateness” and “nationness” (Linz and Stepan 1996) during the process of post-conflict statebuilding.

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Overall, given the opportunities provided by the complex system of minority rights in post-independence Kosovo, there have been some positive results with the integration of Serbs (European Commission 2008-2013; ICG report 2012; UNDP 2012). The main progress has however been made only at the upper level as shown by the political representation of Kosovo Serbs within the Assembly, the minority consultative bodies, the government and the municipal institutions (MRG report 2009). Even though signs of progress at the community level are indicated by the higher turnout in national and local elections, Kosovo Serbs have continued to rely on the existence of the parallel system and have limited socio-economic incentives to accept Pristina's authority (Personal Interviews with Serb MPs 2012/2013).

While pragmatic strategies and policies have been somehow effective at the higher level of representation and participation of Serbs, they have not been properly applied at the community level in order to motivate and create sustainable opportunities for all members of the Serb minority to integrate. In other words, the legislative framework and the formal provisions for protecting minority rights cannot fully compensate for practical needs.

More specifically, while political integration and representation have developed quickly at the elite level, Kosovo Serbs continue to be highly segregated at the community level (ICG report 2012). This has been a consequence of the lack of willingness within the community to accept the authority of Pristina and of the rights and privileges at central and local levels of governance that do not encourage cross-ethnic relations (MRG 2009). In contrast with the aim to secure the obedience of the Serb minority after empowering them, the post-independence developments suggest that Kosovo Serbs have actually assumed their political rights and have developed local self-governance mainly in line with the policy of anti-establishment and non-recognition of the central authority of Kosovo (KIPRED 2008 & 2012).

Therefore, these issues reinforce the idea that both exogenous and endogenous factors have the ability to keep political authority away from the state: "both forces originating outside the boundaries that the state claims for itself and those within its borders have contested state efforts to monopolize the exercising of authority. The result has been the limited state" (Migdal 2001, 263).

The various interpretation and application of minority rights has been dependent not only on the support of the Kosovo authorities but also on the socio-economic and political situation of the community, as well as on its diverse necessities. On the one



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hand, it is vital to underline the benefits and positive impact of the promotion of diversity and the protection of all minorities in Kosovo so as to ensure they can retain their identities. On the other hand, it should be affirmed that instead of protecting minorities, the institutional focus on multiethnicity may also foster new divisions by promoting and focusing solely on the ethno-political identity of different communities (MRG report 2009 AND Personal Interviews 2012/2013). As indicated by the political and social developments in post-independence Kosovo (volatility of electoral results, political participation and representation, political crises), there is evidence in Kosovo of tension not only between the Albanian majority, the Serbs and other minorities, but also among the non-Serb minorities themselves (Deda 2013; ICG 2012 AND Personal Interviews 2012/2013).

The study of post-2008 Kosovo suggests that the mechanisms aiming to integrate and accommodate minorities in Kosovo have been developed based on an *assumption* rather than on an indisputable claim that these groups are not integrated and, thus, they would all need the same measures to address their political, social, economic and cultural rights. Given the priority to integrate the Serb community, the specific post-ethnic conflict tools for reconciliation through power-sharing arrangements were accepted as necessary and appropriate for non-Serb minorities as well (Personal Interviews 2012/2013). Consociational power-sharing measures have enabled elite level representation, participation and cooperation with the majority and other minority communities and it has become a source of legitimacy in Kosovo. However, in the long run, similarly to other cases in the Western Balkans like Bosnia, these restrictive mechanisms for the protection of minorities can lead to *institutionalizing ethnicity* (Bieber 2004) instead of facilitating cross-ethnic political cooperation and constructive integration that also safeguards the political and cultural future of the fragile minorities.

The long-term implementation of the multiethnic framework in Kosovo has a double problem. Not only is the functionality of minority provisions dependent on the actual capacities and willingness of each community, but their lack of appropriateness in relation to the particular circumstances of minorities can make them counterproductive (Personal Interviews with minority representatives 2012/2013). In other words, the ambiguous and top-down externally driven character of the multiethnic institutional and legal setting in Kosovo has also induced separation and insecurity by putting emphasis on group differences.

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Certainly, in the case of Kosovo we have de-ethnicisation of state institutions on the one hand, but on the other, a multi-ethnic composition of the society reflected in politics, i.e. ethnicisation of the political and social status of its citizens. As a result, we have at the same time neutral civic state institutions, and yet the very functioning of the state is based on multi-ethnicity (Krasniqi 2012, 358-359).

The shortcomings regarding the legislation-implementation gap and the unintended consequences analysed here indicate the serious risks that derive from policies and strategies vis-à-vis the management of diversity that are based on an ambiguous vision of statebuilding. I call it ambiguous because (*de jure*) statebuilding in Kosovo has combined elements of multiculturalism and civic republicanism but, *de facto*, it will be difficult to resolve the “tension between two different understandings of nationhood: territorial and political (the French model), where nationhood is understood as a political fact, and ethno-cultural (the German model), where nationhood is understood as an ethno-cultural fact” (Krasniqi 2012, 356). This statebuilding dilemma also applies to the wider international context, as similar solutions have been adopted in neighbouring statebuilding cases like Bosnia-Herzegovina and Macedonia and in longstanding post-conflict state formation processes like in Iraq and Afghanistan. What they all have in common is the perpetual struggle to synchronise liberal democratic norms with conditions of ethno-national, cultural, religious and social diversity.

### Conclusion

This paper analysed the particular model of integrating, accommodating and protecting ethnic minorities in post-conflict and post-independence Kosovo and discussed the significance of this case-study for the general literature on contemporary statebuilding. The young but complex example of Kosovo underlines the difficulties of trying to build a multiethnic liberal democratic state and provides sufficient evidence to show that the statebuilding/peacebuilding literature has overemphasised the exogenous and imposing character of statebuilding..

Instead, this paper examined Kosovo based on the idea that gaining legitimacy is at the heart of statebuilding and has adopted *the limited state* approach (Migdal 2010) to highlight the transformative nature of state-society relations and their inevitable impact on shaping the actual form of the state. Furthermore, the legislation-implementation gaps identified in post-independence Kosovo contributes to the

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recurrent debates around the concepts of [*domestic*] *sovereignty* (Krasner 2004), *democratisation* (Tansey 2007), *legitimacy* (Ponzio 2011) and *stateness* (Linz and Stepan 1996).

In this respect, this research suggests that the effectiveness and the actual negative or positive impact of contemporary practices of post-conflict statebuilding are dictated by local realities to a larger extent than the existing state-centric literature affirms. Therefore, policy-makers and scholars should engage in more balanced and accurate work on exploring whether the failures of contemporary statebuilding derive from the lack of more case-specific solutions and mechanisms or they are intrinsically embedded in the peculiar Western-centric nature of the liberal-democratic state.

Consequently, this also contributes to the broader discussion concerning how the interplay between developing liberal/democratic norms of governance and the focus on managing diversity has been a constant challenge for contemporary statebuilding. In the example of Kosovo, this has been illustrated by its dual task to secure unity at the same time while enshrining minority rights and accommodating diversity and the volatility of the levels of social cohesion despite the existence of a far-reaching system of minority rights. Consequently, the legitimacy and domestic sovereignty of Kosovo, conditioned by the accommodation of all its constituent communities, remain fragile and undermined by the enhanced risk of segregation and marginalisation. In its quest to build sustainable plural democratic governance, Kosovo needs more than defining itself as a multiethnic republic, it also needs to function like one.

The case of Kosovo suggests that the actual character of newly built states is the result of the permanent tensions between liberal-democratic norms of governance and the conditions of plurality, between the need of social cohesion and the management of diversity, between intended and unintended consequences of implementation, between local and international understanding of authority, between national and subnational forms of identity and, more broadly, between the state's *image* as a unitary and coherent political entity and the *practices* of different social actors and agencies (Migdal 2001). Therefore, within the study of contemporary statebuilding, it is important to constantly incorporate the role of society and the local factors that illustrate how values, perceptions and participation of people (representing both the majority and the minorities) matter and shape the process of state-formation.

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