

DEMOCRACY BY DECREE

*Gerald Knause**

After the special UN administration was instituted in Bosnia and Kosovo, the international community, political researchers and local citizens have been faced with a very serious problem, having both theoretical and practical consequences for the process of democracy building: government by decree. The magnitude of crises and the high number of issues that had to be solved at once allowed little time for a proper consultation of citizens, and for creating in the citizenry a proper demand for accountability and democratic procedures of decision-making. Sometimes the decrees were even published in English only since the Official Gazette is read mostly by foreigners. Such incomplete governance raises serious questions about the perspective of transferring the political responsibility from international institutions to local politicians.

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* Gerald Knause is Director of the European Stability Initiative

The problem of Bosnia is of course that you can talk endlessly about the lessons learned from different concrete programs, but also that literally everything has been tried. The amount of resources that have been spent in Bosnia or Kosovo, the other area where my think tank has been doing and is doing a lot of work, about these two places is that the amount of resources are resources that really I think most democracy promoters elsewhere in the world would be dreaming of having. I mean in Bosnia in 1996 16,000 SFOR troops under the NATO command moved in and established a myriad of institutions devoted to human rights - 2,000 police monitors, under the United Nations, OSCE human rights and democratization officials, NGOs of any type and kind. And in the middle of all this there is this special institution, the Office of the High Representative with the task to establish what the 1995 London peace implementation conference in 1995 defined as establishing human rights at the highest international standards, reintegration of refugees, enabling the country to take its rightful place in Europe within the framework of democracy and the rule of law. Now the Office of the High Representative grew immensely in those last six years, which I realized when I worked for the Office of the High Representative and found myself suddenly and unexpectedly in the role of a modern day colonial official. I thought that the first time when I was being driven around in central Bosnia and on the seat beside me was the mayor of the municipality of Zagrovic, which is a little tiny place in central Bosnia where there had been some quite bad events during the war, and I was there and had in front of me the map in charge of redrawing the municipal boundaries, that was the job coming from the Office of the high Representative, so I thought it was useful to consult. So I got the mayor and we were sitting in that car, we were driving through those villages and I remember feeling that this was really quite absurd. I was to realize that in fact we were all doing these kinds of things. By 1998, the Office of the High Representative in Bosnia and now the Kosovo as well UNMIK (United Nations ruling organism) had become engaged in consolidating executive decisions in all areas from police to telling political parties how they should be structured, to decide whether to remove elected officials or unelected officials, civil servants, to what should happen with the local government, creating coalitions at municipal level and cantonal level and federation. The international community was sitting in at the meetings of the state institutions, imposing laws, imposing institutions - 250 decrees in the course of the last four years coming out of the Office of the high Representative and 80 elected or unelected appointed officials being removed by that very Office without any procedures. I do remember that case when a friend of mine was running on the corridors and asking how to impose a law at the level of the federation. That hadn't been done before and nobody could tell him, so he made up the rules himself and sent the law to the Official Gazzette where in the end it was published. Later on in the laws it was written that this decree applies immediately and it was part of the decree which was to be published in the Official Gazzette. In Kosovo we had another problem that the

laws were passed by UNMIK and actually took months to appear because the Official Gazette was also run by UNMIK and many of them have not been translated until today into the language of the Kosovars.

Talking about the rule of law, I've always thought that one of the basic principles is that laws that apply to people should be known by them and from that very simple idea we started having discussions in the Office of the High Representative and then much wider with a whole range of people from the World Bank and USAID and the embassies and the Foreign Ministry about what we were actually doing. It was quite clear that one part of the mission was peace implementation and I'll talk very little about this today - I think peace implementation in Bosnia has worked extremely well over the last six years. But the more interesting part was that the other things that we were doing had nothing to do with getting the army out of politics, nothing to do with arresting war criminals and relatively little to do with getting refugees back. What we were doing led me to the same interesting question where I think Bosnia becomes relevant for this theoretical discussion on democratization theories - which were the concepts that were guiding us to a mission, what was legitimate, what were we supposed to impose, when was it good to remove elected officials because of corruption or obstruction, what were the procedures, what were the limits, what couldn't we do? The hundreds of international officials working on the ground in Bosnia and Kosovo, a whole Sarajevo generation of people then went to take the leading positions in East Timor and then in Kosovo, in Macedonia and moving around the world as nation-building efforts have proliferated during the last five years. Once one has been a few years in Bosnia, then all these people knew all these missions because ultimately at one stage or another it was a form of experience in the Balkans.

What I realized is that strange paradox that the concepts that we are using - good governance, democratization, human rights - can extremely easy be combined in one's head with completely arbitrary action. There was absolutely nothing that made us feel schizophrenic about removing an elected official for life from any form of public employment on the basis of no public evidence in the name of the rule of law and not the rule of man, which was exactly what was written in some of those decrees. And then we started wondering what is all about these concepts. If good governance can be combined in the mind of West European or American democratization officials so easily with arbitrary unaccountable action, we began to understand how you can be a local political leader and begin to talk about good governance and end of corruption and transparency and democratization and trying to do exactly the same thing, with one big difference, that usually didn't have the power of decree [...] But the theoretical question was more interesting because we've now been in Bosnia for six years, we had a second mission in Kosovo - we, the international organizations and institutions - and it doesn't seem to be getting any better. At this moment, the international community is contemplating radical changes to the country's judiciary, so radical that the Council of Europe in the internal discussion said, well, we don't really feel good about this because Bosnia is just

joining the Council of Europe and if you fire all the judges and redesign the judicial system by decree over a 4-month period and in addition impose the criminal code and if you do all this within a year, because so long you have donor funding, it might set a bad precedent.

Now, that argument is not going to win the debate because we realize only for that international organizations when they get too much power they actually behave very similar to any other institutions in such circumstances. But there we cannot leave it as such, because it would be too simple to suggest that the solution is for international organizations to adjust, they are the problem and that's of course clearly not the case. The problem then becomes of defining something that I think is going out of fashion because it's a very difficult debate, the preconditions of democracy. Not wanting to think about preconditions because it is such a touchy issue has led us say that ultimately everything is a precondition for democracy. I mean in those practical early morning meetings between the ambassadors in Sarajevo, between the principals of international organizations in Kosovo, when the pillar heads sat together, literally whatever you wanted to do you could always find a way to link it to an essential precondition for stability and democratization. And of course there are corrupt local elites, electorates that we don't really know because they've been intimidated and this whole nexus of organized crime, corruption, incompetence, obstructionism really forces international actors to step in and take decisions. What developed is really strikingly similar to the rhetoric of William Howard Tuft, the first American governor to the Philippines. When he went to the Philippines with the objective of establishing Anglo-Saxon institutions, he never meant to involve the participation of what he considered to be the corrupt local elite. And this is also very similar to the arguments of the British liberals in the early 19th century, when, John Stuart Mill, gave his great description of how important it is for individuals to realize themselves in liberty. He also made a very strong argument for progressive superintendence, the argument being that certain countries or civilizations were simply not ready for self-rule and that what they need is vigorous despotism. This mode of government is *as legitimate as any other*. [...]

Now that is strange that in many ways our thinking, our conceptual language that seems to have developed so far, seems to be so near, despite the current focus on corruption and governance and democratization and human rights, can so easily, so with 19th century benign British colonialism activity.

And that raises two problems. The first problem is the extreme case of failed states. If that's going to happen, not very often, but from time to time, I think there's a real challenge, a real frontier for the people thinking of democratization theory. On one hand democratic countries engage in trusteeship when the objective is establishing democratic government, on the other, benign experience of Bosnia and Kosovo shows us that the national organizations, with all the rhetoric, are no more willing to be controlled or limited in their freedom of movement than any other political actor from anywhere else. The practical question is whether we do actually have the tools

to do it differently and this is where I point to the long-term engagement, the issue being that if you want to build on what exists, if you follow the World Bank recent recommendations and the World Development Report that institution-building can only work where it builds on existing structures, then what you also have to accept is that it's going to be a lot more knowledge-intensive.

One of the most striking things is how little attention is being paid in many of these international missions to actually identify local opportunities, finding out what the local context is. In Bosnia and Kosovo and in many other contexts, we have very intrusive interventions by people who know very little about the country and about procedures, how to establish procedures of feedback, of general transparency and accountability, of admitting when things don't work. And all of this requires quite a shift. When I read the World Development Report I thought that means to have much more staff in the field. It would be much more complicated, it would have to explain more if it wants to build on what exists and have participatory mechanisms. It would be much more expensive and there is a big problem for the democratization work I think that goes beyond Bosnia that taking seriously our principals is actually going to be a lot more difficult and for that reason a lot of donors and governments that want to have quick results are going to resort to quick solutions which in the case of these protectorates has been the ruling by decrees. The final result is that we don't know how to go on. We have these two countries which are relatively stable, Kosovo and Bosnia, where we've had an enormous number of elections, a lot of money spent on democratization, all the human rights legislation in place, but where the international actors have completely crowded out the space for local politics and where a big issue is now how to move from establishing the peace to establishing a functional political and democratic life.