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Ethnic quotas and the problem of “Others” in consociational regimes

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Consociational theory maintains that cultural groups should be adequately represented in institutions (executive, legislature, civil service). Although formal and explicit ethnic quotas and/or reserved seats are not the only way for achieving this goal, today most consociational regimes contain provisions that guarantee a certain number of seats to the main cultural segments of society (e.g., Belgium, Bosnia and Herzegovina, Lebanon, Northern Ireland, South Tyrol). Yet in all these cases there is a significant number of citizens – the “Others” – who do not belong to any of the groups whose representation is guaranteed through ethnic quotas and/or reserved seats, either because they belong to other groups or because they do not have or do not want to have an ethnic identity. Against this background the paper will address the following questions. How have various consociational regimes approached the problem of Others? What solutions have been found in order to tackle the problem of discrimination of the Others? Further, how should we tackle this problem in ways that are more respectful of liberal principles of liberty and individual self-determination? The goal of this paper is twofold. First, to provide a conceptual roadmap for tackling the issue of Others in consociational regimes in relation to ethnic quotas. Second, to present a comparative empirical overview of the existing solutions in selected consociational regimes.

1. Introduction

Most countries are diverse insofar they are inhabited by persons with different racial, ethnic, linguistic, religious, cultural etc. background. Diversity is a rule, not an exception. There are however strong variations across countries with regard to the *kind* of diversity (e.g., mainly racial or ethnic, only religious, religious and linguistic, etc.), the *sources* of diversity (autochthonous or immigration-driven), the *number* and the *size* of various groups, etc.

In this article my focus is on the legal status of the groups and on the ways through which the individuals are linked to their groups of reference and to the polity as such. There are strong cross-country variations in this respect. In some countries the official policy is inimical to group recognition. In France, for example, the state is neutral towards group identities. All French citizens are formally equal and officials are not even allowed to ask questions on ethnic identity of citizens. For example, we know that a significant number of French citiezsn are of Arab ethnic origin and of Islamic faith, but we actually do not know these numbers.

Other countries, like the U.S., allow for questions of identity to be asked in the census. They even use these data in order to implement the principle of equal opportunities, for example through affirmative action programs at universities. Nevertheless, they hardly go further, for example they do not explicitly reserve seats in parliament for minority groups and they refrain from using the quotas in public administration. The most that they do is to rely on *indirect* and *implicit* ways that increase the *probability* that minority groups get access to institutions, and even this policy is highly controversial. Moreover, this approach can work only for specific groups: for instance, if they are concentrated in geographic areas (see redistricting in the U.S. that creates the "minority-majority districts" for African and Hispanic Americans). In the U.S., the probability is high that a black candidate will be elected in the districts with a majority of blacks, but white candidates can run too and it is not impossible that they win. In France, in 2001, the *Loi sur la parité* introduced gender quotas on party lists but this had required a constitutional amendment, it is restricted only to gender and leaves the liberty to voters to vote or not to vote for female candidates.

On the other horn of the continuum we find countries in which every individual is classified on the basis of his or her group belonging. In some countries individuals must declare their group identity when filling the forms for personal documents or running for elective offices. In most extreme cases ethnicity is registered in official documents. In Rwanda, before the

genocide of 1994, the identity cards displayed people's ethnicity. In Greece, until 2000, it was mandatory to include one's religion on identity cards. In Bosnia, at least until the late 1990s, one's ethnic identity was registered by state officials but not shown on the identity card itself.

This practice is not limited to African of South-Eastern European countries but concerns also Western countries. In the Italian province of South Tyrol, for example, every person must declare his or her ethnolinguistic identity (Italian, German, or Ladin) in the census. The data are registered and were used for distribution of positions in political institutions, civil service, schools, and even for subventions in public housing. For a period of 10 years, until the next census, a person cannot change her ethnic identity.[1] Those who refuse to disclose their identity during the census could loose their job in public administration or are banned from the very possibility to run for office in elections.

Countries in which democratic institutions officially recognize the existence of groups and assign positions on the basis of people's identity typically adopt the so-called *consociational* model of democracy. According to this model, the (main) segments that compose a society must share power in the executive and enjoy a degree of group autonomy (often via federalism, if the groups are geographically concentrated). Further, the principle of proportionality should be applied when choosing the electoral system (e.g., list PR) for parliamentary elections and for distributing jobs in public administration, and the minorities need to have the right of veto on issues that are of vital importance for their group identity and survival.

What happens if in such a regime a person does not belong to any of the recognized groups? Or if she does not want to belong to such groups? The position of these individuals – that I will call "Others" in this article – should be of utmost concern for liberal democracy, with its accent on individual rights and liberties. We are in front of a dilemma: on the one hand, liberal democracies must respect high standards of international law that protect individual freedoms and liberties. They should not, for instance, discriminate in any way against their citizens who do not belong or choose not to belong to any of the officially recognized groups.

On the other, the very purpose of consociational regimes is to secure peace and democracy in divided societies, by accommodating the *main segments* who compose such societies. The

[1] This practice was introduced in 1980. It was a bit relaxed in 2005. Citizens are now allowed to change their registered ethno-linguistic identity after a period of seven years.

political agreement of these segments is considered inevitable for the success of consociational democracy. Therefore, consociationalists are not really interested in the legal and practical concerns of Others. Indeed, they fiercely criticize the role of *courts* where consociational agreements are challenged or even modified in order respect international conventions on human rights and other basic principles of liberal democracy (McCrudden and O'Leary 2013).

Against this background the aim of this paper is twofold. First, I will present a conceptual roadmap in order to have more clarity on *who* are the Others in consociational democracies. Second, I will present a comparative overview of the situation of Others in five consociational regimes: Bosnia and Herzegovina, Belgium/Brussels, Lebanon, Northern Ireland, South Tyrol and Burundi.

2. Who are the Others?

The first question that I will address concerns the definition of "Others" in consociational regimes. (For concrete examples I draw insight from Section 3 of the papers in which the five selected cases will be developed.)

The simplest answer to this question is to say that Others are all those citizens who live in a consociational regime but do not belong to any of the "main segments" of the society – that is, the segments on the basis of which the consociational model of democracy has been constructed. So, in Bosnia and Herzegovina, the Others are all those who are neither Bosniaks (called "Muslims" until 1993), nor Croats, nor Serbs.

Yet the galaxy of Others is much more complex and can be divided in a number of sub-categories, on the basis of the following distinctions:

- Citizens vs. foreign residents. Most countries comprise a given number of immigrants. Some of them still have only a foreign citizenship, other have been naturalized. The non-citizens (of their host country) are clearly Others. The situation is less clear-cut for the naturalized citizens, though. In some consociational places, like Belgium and South Tyrol, it is quite easy for citizens of foreign origin to become included, if they wish, into one or another main segment. In South Tyrol, for example, it suffices that a

person declares herself as German, Italian or Ladin speaker, either during the census or through public officials.

- Mono-ethnic v. bi-ethnic. If we now turn to autochthonous groups belonging to the category of Others, we can first distinguish between mono-ethnic and bi- or multi-ethnic groups. The Twa in Burundi, for example, are a tiny minority of about 1% and they are mono-ethnic. The children from ethnically mixed marriages are by definition bi-ethnic. (An exception is Burundi, where ethnicity is transmitted exclusively via the father.) They can often choose to identify themselves with the ethnic group of one of the parents but they can also choose not to choose between two ethnicities and, thus, become Others.
- Mono-ethnic vs. multi-ethnic/civic. Some citizens may openly embrace a civic and multi-ethnic conception of identity. When members of the Northern Ireland Assembly elected on Alliance or Green party lists declare themselves as neither Unionists nor Nationalists but as “Other”, they deliberately an ideological preference for a cross-community identity. Something similar happens in Bosnia and Herzegovina, when people declare themselves as “Bosnians” (or as “Yugoslavs” until 1992). In this way they do express a given identity: not a mono-ethnic but rather a multi-ethnic civic identity. Notice that these individuals may but must not be from bi-ethnic mixed marriages. Quite often they have a mono-ethnic background but not identify with it for ideological, political or other reasons (for example, because they believe in a multi-ethnic concept of over-arching nationality, like the one that can be observed in Switzerland).
- Recognized vs. non-recognized. Some mono-ethnic groups belonging to the category of Others are nevertheless officially recognized. This official recognition can take many forms. Groups can have reserved seats in parliament. For example, the Twa in both chambers of the Burundian parliament or German speakers in the Senate of Belgium. Or they can have a special autonomy status, like the Druze in Libanon. In Bosnia and Herzegovina a special law on national minorities recognizes 17 groups (Roma, Albanians, Jews, Ukrainians, etc.). Yet other groups have not received such official recognition. For example the Ganwa in Burundi.
- Ethnic vs. non-ethnic. Some individuals simply do not want to have any ethnic (neither mono- nor bi- nor multi-) identity. I will call them “ethnic objectors”, by following the term *obiettori etnici* invented in South Tyrol in the late 1970s.

Table 1 presents an overview of the conceptual clarifications that I have made so far.

Table 1. Others in consociations: a conceptual map with selected examples

Official consociational segments	*Others*					
	Mono-ethnic		*Bi-ethnic*	*Multi-ethnic / civic*	*Non-ethnic*	*Outsiders (with citizenship)*
	Recognized	*Non-recognized*	*Non-recognized*	*Non-recognized*	*Non-recognized*	*Non-recognized*
Catholics and Protestants in N. Ireland	Twa in Burundi; Roma in BiH; Germans in Belgium	Gwana in Burundi	Children with unknown father in Burundi	Bosnians in Bosnia, Alliance Party in N. Ireland	Ethnic objectors in S. Tyrol and in Bosnia	Arabs in Burundi

Now that we have a better picture on who the Others are, I will present and discuss the six selected cases in more detail, by focusing particularly on constitutional provisions that concern the Others.

3. A comparative overview of Others in six consociational regimes

3.1. Bosnia and Herzegovina

the basis of a suit filled by two Bosnian citizens – actually the leaders of the Jewish and the Roma community – 2009 the European Court of Human Rights ruled that two Bosnian institutions – the state Presidency and the second chamber of Parliament (the House of Peoples) – do not respect the European Convention on Human Rights because they reserve seats only for the citizens belonging to one of the three "constitutional peoples". Notice that these three groups make up around 98% of the Bosnian population and that the Others are legally banned from running only to these two very high political offices but not elsewhere. For example, they can run for the first chamber of Parliament, for local, cantonal and entity parliaments, they can be appointed to the cabinet – so that between 2006 and 2010 the Bosnian foreign minister was of Jewish background), etc. Further, nothing prevents an Other who whish to run for the Presidency of to be appointed to the second chamber of Parliament to declare himself, only and exclusively for these purposes, as a member of any of the three constituent peoples. So one could argue that the real extent of legal discriminations suffered by Others is very limited and that it is much more important to preserve stability of democratic institutions and peace among the main segments of the society: after all, Bosnia is

a fragile state and the institutions under scrutiny constitute group guarantees that were agreed upon in Dayton, Ohio, in order to terminate a war (see McCrudden and O'Leary 2013: ch. 2).

And yet the European Court on Human Rights (ECHR) obliges the Bosnian politicians to reform their institutions and the implementation of this decision, which still has not been done (as of July 2014), has been of the main political issues after 2009.

One might think that Sejdic and Finci case was particularly successful because it was filled by the publically active and well-known representatives of two autochthonous, and vulnerable from an historical perspective, Bosnian communities.

So Hodžić and Stojanović (2011: 74) asked whether the ECHR would have taken a similar decision if *any* citizen belonging to Others had sued Bosnia and Herzegovina:

> Also, particularly important in the very profiling of the judgment in the public discourse in Bosnia was probably the fact that the application had been lodged by members (but also representatives) of two communities who have been living in Bosnia for centuries. Namely, it is not certain that an application by representatives of communities who arrived in Bosnia only recently and who can be counted among "immigrants with a Bosnian passport" (e.g. Chinese) would have carried the same weight and had the same implications. The question also arises as to whether an application by an "ordinary" citizen who has not declared himself or herself as member of an ethnic group and who insists only on his or her identity as an individual would have carried the same political or moral weight and provoked the same public reaction as the Sejdić-Finci case.

Today we now that these doubts were unfounded. Indeed, on 15 July 2014 the ECRH maintained its position in its decision in the case *Zornić v. Bosnia and Herzegovina* in which it accepted the appeal of a Bosnian citizen, Ms Azra Zornić who "refuses to declare affiliation to any particular ethnic group but declares herself as a citizen of Bosnia and Herzegovina".[2]

The Court considered that Ms Zornić's case was identical to the Sejdić and Finci case.

[2] The decision is not final. It is available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145566#{%22itemid%22:[%22001-145566%22]}

> Like the applicants in that case Ms Zornić was excluded from running for election to the House of Peoples on the ground of her origin. In the judgment Sejdić and Finci, the Court held that such exclusion had pursued an aim broadly compatible with the European Convention, namely that of restoring peace. The nature of the conflict in Bosnia and Herzegovina between 1992 and 1995, marked by genocide and "ethnic cleansing", had been such that the approval of the "constituent peoples" had been necessary to ensure peace and could explain the absence of representatives of other communities – such as local Roma and Jewish communities – at the peace negotiations. However, noting the significant positive developments in the country after the Dayton Peace Agreement and the existence of other mechanisms of powersharing which did not automatically lead to the total exclusion of representatives of other communities, the Court held that the applicants' continued ineligibility to stand for election to the House of Peoples had lacked objective and reasonable justification, amounting to a discriminatory difference in treatment [...]

Notice that, according to the conceptual map presented in Section 2, Ms. Zornić belongs to the sub-category of Others called "ethnic objectors", whereas both Mr Sejdić and Mr. Finci belong to the sub-category "mono-ethnic recognized group". But these distinctions has had no importance for the ECHR:

> the Court found that, *whatever her reasons* were for not declaring affiliation with any particular group (intermarriage, mixed parenthood or simply that she wished to declare herself as a citizen of Bosnia and Herzegovina), she should not be prevented from standing for such elections on account of her personal self-classification. (emphasis added)

This judgment of the ECHR confirms that, once peace has been established, the concerns based on fundamental rights and freedoms of citizens have more weight than consociational concerns according to which priority must be given to constituent segments of a divided society. This judgment, therefore, further strengthens the position of Others in BiH and might have consequences for other consociational regimes too.

3.2. Belgium/Brussels

Article 99 of the Belgian Constitution establishes that half of the ministers in the federal

government must be from the Flemish-speaking group and half from the French-speaking group.[3] In addition, under Article 43, paragraph 1 of the Constitution, each member of the lower house of parliament is obliged to declare himself or herself as member of one or the other linguistic group in order to make the implementation of certain constitutional provisions possible, in particular the right to veto on "vital" issues (the so-called "alarm bell" procedure).

It is clear, therefore, that Duch and French speakers are the main consociational segments in Belgium. This situation is particularly problematic from the point of view of Belgium's autochthonous German linguistic group, whose language is one of the country's three official languages and which is institutionally recognised as a constituent unit of the state, with its own parliament (admittedly, with limited powers, above all in the field of culture and education). The only distinguishing feature of the German-speaking group is that it is statistically (74,000 inhabitants, approximately 0.7% of the population) and socio-politically irrelevant in Belgium, its survival depending only on the balance of power between Flemish (approximately 60% of the population) and French-speaking (approximately 40%) groups (see Stangherlin 2005).

The only institution in which German-speaking Belgians have a guaranteed seat is the upper house of parliament – the Senate, where one of the 71 seats (i.e. 1.4%) is reserved for a person nominated by the Parliament of the German community, who at the same time must be member of that parliament.[4]

Within Belgium, a further interesting case study is the Region of Brussels. It is one of the three federal entities of the federation (together with Flanders and Wallonia) and it is officially bilingual French/Dutch. According to estimations, however, the Dutch speakers have a population share of about only 15%. Ethnic (here: linguistic) quotas exist in the regional parliament and in the regional cabinet. So 72 out of 89 members of the regional assembly must be French speakers and 17 must be Dutch speakers.[5] All parties, and as a consequence all candidates, must register as either French or Dutch-speaking. The same applies to voters. Every citizen of this region is *free* to choose to vote for Francophone or

[3] The Constitution of Belgium is available online, in different languages (here in French http://www.senate.be/doc/consttifr.html).
[4] The Constitution of Belgium, Article 67.
[5] See Loi du 12 janvier 1989 réglant les modalités de l'élection du Parlement de la Région de Bruxelles-Capitale et des membres bruxellois du Parlement flamand, available at http://www.elections.fgov.be/fileadmin/user_upload/Elections2014/FR/Electeurs/reglementation/lois/12-JANVIER-1989_Vers20140215.pdf

Dutch-speaking parties and candidates, but they *must* make a choice. Further, a quota system is applied to the regional cabinet: there must be two French and two Dutch-speaking ministers.[6] The Minister-President stems from the largest linguistic community, i.e. the Francophone one. In addition, there are three secretaries of state, one of which is a Dutch speaker.

3.3. Lebanon

The current Lebanese Constitution is based on the Ta'if Peace Agreement of 1989, which made it possible to end the civil war (1975–1990) in the country.[7] Interestingly, the Constitution states that 'the people' (singular!) is the source and holder of sovereignty.[8] Article 6 of the Constitution also refers to 'Lebanese nationality'.

Moreover, the preamble (Item h) also states that "the suppression of political confessionalism is an essential goal", which is to be achieved gradually. What is implied by "political confessionalism" is the distribution of posts in state institutions between Muslims and Christians. Article 12 of the Constitution stipulates that recruitment in the civil service should be exclusively merit-based. The sole exception is the highest officials of the civil service, among whom Muslims and Christians have to be more or less equally represented.[9]

The parliament consists of only one chamber (the House of Representatives) and has 128 members. The system of quotas in parliament is regulated in detail under Article 24 of the Constitution. However, this is preceded by an important provision according to which the quota system is of a provisional and not permanent character and will be in force "until such time as the House of Representatives enacts a new election law without confessional restrictions". This principle is even more explicit in Article 95 of the Constitution. In other words, overcoming political confessionalism is a very important constitutional goal of the Lebanese Republic, however difficult it may be to achieve it in practice, precisely because of the deep divisions in society along religious/political lines.[10]

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[6] http://www.bruxelles.irisnet.be/a-propos-de-la-region/le-gouvernement-regional.

[7] We use the official French version of the Constitution of Lebanon. It is possible that some terms in Arabic should be translated differently into English. The text of the Constitution is available at http://democratie.francophonie.org/IMG/pdf/Liban.pdf

[8] Ibid., Preamble, Item d.

[9] Ibid., Article 94.

[10] For example, a 2009 initiative by Lebanese president Michel Suleiman to establish a state commission tasked with eliminating the confessional political system in the state was met with resistance and scepticism on the part of most political actors (Taneja 2010: 190).

Meanwhile, the quota system reflecting a consociational model of democracy is based on two principles: (a) parity (50% : 50%) between the Christians and the Muslims, i.e. 64 representatives from each community, and (b) proportional (commensurate) representation of different sects *within* Christian and Muslim groups. Furthermore, what has also been introduced is (c) the principle of proportional representation for all regions (Kleven Horn 2008).

As for the executive branch, there are no explicit provisions on power-sharing between confessional groups. The informal rule is, however, for the president to be a Maronite Christian and for the head of government (i.e. of the Council of Ministers) to be a Sunni Muslim. The Speaker has traditionally been a Shiite Muslim. The government should also include a more or less equal number of persons from the ranks of all religious communities.[11]

Therefore, one can argue that the main segments in the Lebanese consociational regime are Maronite Christians, Sunni Muslims and Shiite Muslims. The other confessions belong to the category of Others. So, out of 64 seats reserved for "Muslims", the Sunnis and the Shiites have 27 seats each. The smaller Muslim groups have a total of 10 seats: eight seats are reserved for the Druze and two seats for the Alawites. Within the 64 seats reserved for Christians, 34 go to the Maronites, 14 to Greek Orthodox, eight to Greek Catholics, five to Armenian Orthodox, one to Armenian Catholics, one to Protestants and one to "other" Crhsitians.

Lebanon, thus, applies a complex confessional election system which does not reserve seats for Christian and Muslim Others, but not for any other Others. Moreover, there is not even an explicit provision in the Constitution referring to them.[12] Although this political system has been a constant target of criticism by international bodies for the protection of human rights, the prospect of it being abandoned has seemed invariably slim for decades now.[13]

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[11] This distribution of political functions dates as far back as the 1943 National Pact, a verbal agreement reached by the then Lebanese President (the leader of the Maronites) and the Prime Minister (the leader of the Sunnis) immediately after gaining independence from France. See e.g. Zahar (2005).

[12] On the other hand, the 2006 Lebanese Law on the Rights and Freedoms of Minorities stipulates that minorities "shall have the right to proportional representation in public service, state bodies and local self government bodies" (quoted in Palermo 2010: 443, fn. 21).

[13] See e.g. the UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Lebanon, CERD/C/304/Add.49, 30 March 1998; CERD/C/64/CO/3, 28 April 2004, para. 10; cf. also the UN Human Rights Committee, Concluding Observations on Lebanon, CCPR/C/79/Add.78, 1 April 1997.

3.4 Northern Ireland

The Good Friday or Belfast Agreement of 1998 consistently follows the consociational model of democracy (McGarry and O'Leary 2004). It is based on the principle of equality of the two main sections of Northern Ireland's society: the unionists (Protestants) and nationalists (Catholics). Yet, one article of the Agreement explicitly also refers to "other": at the first session of the Assembly, all of its members – a total of 108 – must "register a designation of identity" – whether they are unionists, nationalists or "other".[14]

The current Northern Ireland Assembly, the fourth after the Good Friday / Belfast agreement, was elected on 5 May 2011 and convened a week later. As the official minutes of the first meeting show, the very first activity of the Assembly was the designation of identity.[15] Ever member of the Assembly was invited to "sign the Roll" and than to indicate "a designation of identity". This was the result of that procedure: 43 nationalists, 56 unionists and nine Others, for a total of 108.

The self-identification of Assembly members seems to be closely linked to their party affiliation and ideological position. Indeed, the only Others were the eight representatives of the Alliance Party and the only representative of the Green Party.[16] These two parties are the only parties who explicitly reject consociational system of government and the division between Protestants and Catholics.

What is immediately evident is that an individual's designation of identity is not a condition for his or her participation in the election process. The purpose of this provision on the post festum designation of identity by elected representatives is to allow for measuring cross-community support, which "key decisions" must enjoy. It is necessary for key decisions to get either (a) a simple majority in the Assembly and a simple majority within each of the two groups, or (b) 60% of votes in the Assembly and at least 40% support within each group. Key decisions primarily include the election of the Speaker, and the election of the Premier and

[14] Article 6 in the Section "Democratic Institutions in Northern Ireland" states: "At their first meeting, members of the Assembly will register a designation of identity – nationalist, unionist or other – for the purposes of measuring cross-community support in Assembly votes." Thus, in Northern Ireland there is no obligation for candidates to identify themselves before, but only after the elections, whereby members of the Assembly are also able to declare themselves as "other", i.e. as neither "nationalists" (i.e. Catholics) nor "unionists" (i.e. Protestants). The text of the Agreement is available at www.nio.gov.uk/agreement.pdf.

[15] Northern Ireland Assembly, Minutes of Proceedings, No. 02-11/12, Session 2011/2012, 12 May 2011 (http://www.niassembly.gov.uk/Assembly-Business/Minutes-of-Proceedings/Thursday-12-May-2011/).

[16] The nine Others are: Steven Agnew (Green Party), Judith Cochrane (Alliance Party), Stewart Dickson (Alliance Party), Stephen Farry (Alliance Party), David Ford (Alliance Party), Anna Lo (Alliance Party), Trevor Lunn (Alliance Party), Chris Lyttle (Alliance Party), Kieran McCarthy (Alliance Party).

Deputy Premier. Thus, nowhere in the Agreement is it stated that the Speaker or Premier cannot be an Other. But, naturally, it is difficult to imagine someone who is an Other in reality winning the majority (or at least 40%) within each of the two groups of representatives.

Of course, this concept of designation of identity in the Assembly, introduced for the purpose of consensual political decision-making, is not free from controversy. Critics have asserted that although the system was conceived as a mechanism aimed at achieving the legitimate goals of Northern Ireland's society as well as at implementing the new standards of political participation of minorities, reducing the political life to only two monolith religious/ethnic/political identities distorts the political picture of Northern Ireland, a priori making it impossible for parties not linked to either of the two groups to exert any significant influence in parliament (see, e.g., Gilbert 1998). However, under the Assembly rules each MP has the right to change his or her initial designation of identity once during one term in office (Wilford and Wilson 2001). So it already happened that a number of parliamentarians who used to be 'other' chose to re-register as unionists or nationalists, especially when some important decisions had to be taken (McCrudden 2004: 218).

Despite the said problems and controversies, an important difference with Bosnia, for example, lies in the fact that ethno-cultural identity in Northern Ireland is not, at least in the formal sense, a requirement or condition for exercising the right to political participation.

3.5. South Tyrol

In the Italian province of South Tyrol, all positions in state bodies (at the municipal level and at the provincial level, both in elected bodies, e.g. assemblies, and the civil service) are reserved for only three ethno-linguistic groups: Italian, German and Ladino.

The main purpose of the mandatory declaration of ethnicity is precisely the exercise of the right to access political functions and the public service (Marko 2010: 145). Moreover, the identification of citizens is done every ten years through a population census (this system was employed for the first time at the 1981 population census). It is an ethnic census, meaning that the information on ethno-linguistic affiliation is subsequently not made anonymous for statistical purposes but included in a database accessible to state authorities. Accordingly, if person X stands for election to a certain post (e.g. for the parliament or for mayor), he or she is automatically included in the "quota" for his or her ethno-linguistic group. Those who do

not wish to declare their ethnicity are excluded from all posts.[17]

Having said this, it is worth noting that if citizen Y, for instance, declares himself or herself as Italian, in the following ten years (i.e. until the next population census) he or she cannot stand as candidate for any position as a member of, for example, the German linguistic group. Thus, this system is, as we shall see below, more rigid than the one in Bosnia, its flexibility consisting only in leaving citizens the right to declare themselves differently at the next population census. In addition, for a period of three years following a population census, every citizen also has the possibility to change his or her declaration of affiliation at his or her explicit request, which then enters into force only two years later (Lantschner and Poggeschi 2008: 227).

Since the 1991 population census, citizens have also been allowed to declare themselves as Others. However – and this is a detail which seems very important to us – the Others have to be "aggregated" into one of the three ethno-linguistic groups for the purpose of exercising his or her right to stand for election. It is important to note that this is a declaration that is considered to be an individual "declaration of aggregation" and not a declaration of identity, i.e. membership of a certain group.[18] According to Francesco Palermo, Professor of Constitutional Law in Bolzano and former Senior Legal Adviser to the OSCE High Commissioner for National Minorities, this arrangement does not change much ("quite to the contrary, almost nothing") in practice, but from a legal point of view it reduces "but does not fully rule out" the possibility of complaints similar to those lodged by Sejdić and Finci.[19]

In any event, not a single application from South Tyrol has yet been lodged with the ECHR over potential discrimination of 'Others' with regard to the enjoyment of political rights (Marko 2010: 145). On the other hand, in 1999, in the *Beltramba* case the *Corte di cassazione* (Italian supreme court) concluded that a person's non-declaration of ethnolinguistic identity cannot result in him or her being denied their right to stand for election. In other words, in the very telling view of the court, the situation in South Tyrol is illegal.[20] However the main problem in this case lies in the fact that the judgment was issued by a court whose decisions

[17] See the case of Alexander Langer (Lantschner and Poggeschi 2008: 230; Stojanović 2013: 200-206).
[18] Ibid. 228. This approach is similar to the arrangement proposed by the so-called Butmir Package of constitutional amendments for the participation of delegates from the ranks of Others in the House of Peoples of the Bosnian Parliamentary Assembly.
[19] Personal communication via e-mail, 3 August 2010.
[20] Judgment No. 11048 of 24 February 1999.

only have an *inter partes* and not *erga omnes* effect, which means that the principle contained in the ruling cannot be implemented, i.e. imposed, in practice, although the judgment itself is very important from the point of view of legal argumentation.

3.6. Burundi

Burundi is another interesting case study. Its current political system, based on the peace agreements signed in Arusha in 2000 and Pretoria in 2003, follows the consociational model of democracy (Lemarchand 2007). The political positions are divided between the two main ethnic groups: the Hutu majority of about 85% and the Tutsi minority of about 14% (McCulloh 2009: 125). The tiny Twa minority of about 1% also enjoys legal protection.[21]

In the 2005 Constitution of Burundi the ethnic (and gender) quotas are very much present, both in the form of reserved seats and within electoral lists. Indeed, the constitution "comes closer than any other African constitution, past or present, to putting into practice Lijphart's model of consociationalism" (Lemarchand 2006: 12, quoted in McCulloh 2013: 133).

The National Assembly, the first chamber of parliament, is composed "of at least one hundred Deputies on the basis on the basis of 60% of Hutu and 40% of Tutsi, including a minimum of 30% of women, elected by universal direct suffrage for a mandate of five years, and of three Deputies originating from the Twa ethnicity co-opted in accordance with the electoral code" (Article 164). The same ratio (60% Hutu, 40% Tutsi, 30% women) has been chosen for the composition of the cabinet (Article 129). However, a parity ratio (50% Hutu, 50% Tutsi), though not specified in the Constitution, has been put in place in the army, probably because of the delicate role that the army, than dominated by the Tutsi, played in the 1993-2004 civil war (McCulloh 2009: 132; Samii 2013: 561).

If the results of the elections do not reflect these percentages, the National Assembly then "proceeds to redress the corresponding [*afférents*] disequilibrium by means of the mechanism of co-optation specified by the electoral code" (Ibid.). Further, the Constitution states that the candidates "must be of Burundian nationality *and origin*" (Article 165, emphasis added).

The electoral system for the first chamber is the bloc (i.e. closed) list PR (Article 168). The party lists "must have a multi-ethnic character and take into account the equilibrium between

[21] These population numbers should be handled with care because they represent "commonly accepted approximations as no formal census has taken place in the post-independence period (McCulloh 2009: 125).

men and women. For three candidates registered together on a list, only two may belong to the same ethnic group, and at least one in four must be a woman."

In the second chamber, the Senate, the ethnic quota is not explicitly mentioned. Only the Twa minority has a guarantee of three seats and women must have at least 30% of the seats (Article 180). However, apart from the Twa seats and the seats reserved for the former Presidents, all senators are appointed in provinces (two from each province) by electoral colleges "composed of members of the communal councils of the considered province, originating from different ethnic communities and elected by distinct ballots". McCulloh (2009: 132) claims that in practice this amounts to the parity between the Tutsi and the Hutu in the Senate. Yet this is not clear in the 2005 constitution as it was in a previous draft, available online, according to which "in any case, the number of senators, which is paritary in ethnical and political terms, cannot be superior to fifty-four".[22] This parity provision was later erased, for reasons that I have not been able to discover, and substituted with the 30% gender quota.

What is the situation with Others in Burundi? Who are the Others, that is citizens who do not belong to the three recognised ethnic groups? My inquiry indicates that there are at least four groups of Others.

First, there is the ethnic group called Ganwa or Baganwa. Their members do not identify themselves with any of the three official groups – even though some see them as a sub-ethnicity of the Tutsi – and consider themselves as descendants of royal families who ruled over Burundi in the past centuries. After the Arusha peace agreement they have protested because they were not explicitly mentioned in the new Constitution and they have demanded inclusion into the quota system.[23]

Second, there are citizens of foreign origin, naturalized as Burundi citizens. Some of them have a Burundi mother, but since Burundi's social definition of ethnicity demands that it is transmitted via the paternal line, the mother's ethnicity is not determinant, so that these citizens are seen as Others.

[22] The draft of the post-transition Constitution of Burundi is available in French at http://democratie.francophonie.org/IMG/pdf/Constitutiontipost-transitiontidutiBurundi.pdf.

[23] Jean-Claude Mporamazina, personal communication by email, 21 January 2014. Mporamazina was the owner and initiator of the Internet based "Burundi Discussion List", listed by Stanford University Libraries (http://www-sul.stanford.edu/depts/ssrg/africa/burundi.html).

Third, there is a community of Arab origin, whose ancestors came to Burundi from Oman and Yemen more than a century ago. Those of them who did receive the Burundi nationality do not, of course, identify themselves with any of the three official ethnic groups.[24] It is unclear whether the constitutional provision according to which candidates to the National Assembly must be of Burundian nationality "and origin" (see above) was introduced in order to exclude this category of Others from the parliament.

Finally, some citizens cannot "prove" their identity because they do not know who their father is. But it seems that this group is very marginal.

3.7 Comparative overview of various cases

Table 2 presents an overview of the legal situation of Others in the selected consociational democracies.

[24] Athanase Karayenga, personal communication by email, 21 January 2014. Karayenga is a former journalist and communication advisor to Burundi's President, and currently a media programme manager in Foundation Hirondelle.

Table 2. The Others in six consociational regimes: an overview

	Bosnia and Herzegovina	*Belgium / Brussels*	*Lebanon*	*Northern Ireland*	*South Tyrol*	*Burundi*
Voters must identify ethnically	No	No (Belgium) Yes, via party choice (Brussels)	No	No	Yes, via nominal census)	No
Candidates must identify ethnically before/after election	Yes, before election	Yes, before election (Belgium) Yes, after election (Brussels)	Yes, after (?) election	Yes, after election	Yes, before election	Yes, after (?) election
Official main consociational segments	Bosniaks Croats Serbs	Dutch speakers French speakers	Maronites Sunnis Shiites	Unionists Nationalists	Germans Italians Ladins	Hutu Tutsi
Who are Others?	a. 17 national minorities b. Bosnians c. ethnic objectors	a. German speakers; b. other	a. Minority Christians and minority Muslims b. other	a. Ethnic objectors	a. Ethnic objectors	a. Twa b. Gwana c. Arabs d.Unknown father
Quotas for Others	No (state level[25]) Yes (municipal level)	Yes (German speakers in the Senate), No (other Others)	No	No	No	Yes (Twa), No (other Others)
Passage from Others to official segment	De jure easy (no check), de facto difficult	De jure easy, de facto difficult.	De facto difficult.	De jure easy, de facto difficult	De jure rather difficult (only every 7 years)	De jure and de facto difficult.

4. Conclusion

In most consociational regimes that I have analysed in this paper the Others represent a statistically very tiny, if not marginal, and extremely heterogeneous group. Therefore, one might ask: is it really worth exploring the position of Others in consociations?

I think so. The example of Bosnia and Herzegovina shows that the main issue at stake in not at all of statistical nature. *Even if* Others are a *statistically* insignificant category, their exclusion from consociational institution raises significant *normative and legal* issues. Indeed,

[25] Exception : one member of the cabinet (the Council of Ministers) can be Other.

the equality of *all* citizens is a paramount principle of liberal democracy. Therefore, contemporary standards in human rights and citizens' rights and liberties do not allow any fundamental discrimination of citizens based on their ethnic belonging.

Again, the example of Bosnia is telling. After the landmark decisions of the ECHR (*Sejdić and Finci v. Bosnia and Herzegovina* and *Zornić v. Bosnia and Herzegovina*) the Bosnian authorities are obliged to undertake deep reforms of their political institution, based on the consociational model of democracy, in order to eliminate every discrimination against the Others.

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