

Introduction: Ethnocracy at the Heart of Europe

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ABSTRACT The Roma and the Jews make up less than half a per cent of the population of Bosnia and Herzegovina. And yet their leaders could sue their country, successfully, at the European Court of Human Rights, by claiming that the system of reserved seats in the state Presidency and the second chamber of Parliament is monopolised by and for the three ‘constituent peoples’ (Bosniaks, Croats, and Serbs) and, thus, discriminatory towards minorities and other citizens. The 2009 ruling of the Court in Strasbourg (*Sejdić and Finci v. Bosnia and Herzegovina*) has shaken the very cornerstones of this unique European consociational ethnocracy and has obliged their leaders to undertake deep constitutional reforms. The three articles that compose this Special Section explore the role played by the ‘national minorities’ (such as Roma and Jews) in Bosnian politics, in particular in relation to the introduction and implementation of reserved seats for national minorities introduced in local assemblies for the 2008 municipal elections. The articles analyse the use of the system of reserved seats by national minorities, the reactions and the strategies of the ethnic parties representing the three constituent peoples and the patterns of descriptive versus substantive representation of minority interests. Addressing the questions of ‘what’, ‘why’ and ‘how’ of political representation of national minorities in a consociational context, the articles in this Special Section show that Bosnian tripartite ethnocracy hardly supports the intrusion of ‘non-constitutive’ elements in its framework and that national minorities still face significant obstacles when it comes to representation of their interests in a political system mainly concerned with the group rights of constituent peoples.

Bosnia and Herzegovina as a European *Unicum*

When we think of the relationship between nationhood, statehood and democracy, we come to the conclusion that Bosnia and Herzegovina is a true *unicum* in Europe. It is, we claim, the only country in Europe that displays the following four characteristics:

- (a) it is officially multi-national, for its constitution explicitly recognises the three ethno-religious communities (Bosniaks, Croats and Serbs) as ‘constituent peoples’,¹ so that none of them can claim exclusive ownership of the state (as is the case in states with only one ‘titular nation’—e.g. Croatia, Serbia or Slovakia), *and*

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- (b) none of its three constituent peoples is demographically and electorally dominant,² so the country lacks a leading community (sometimes called *Staatsvolk*) whose existence has been seen by some as a necessary condition for the stability of a liberal democracy, *and*
- (c) constituent peoples enjoy group rights (e.g. the right to education in one's own language or representation in the legislature and executive bodies) on the whole territory of the state,³ *and*
- (d) group belonging is defined almost exclusively through ethnic and ascriptive criteria and based on the principle of individual self-declaration.⁴

Many European countries display one or perhaps two of these characteristics, but no other shares all of them. Examples of officially and explicitly multi-national European countries, that is, countries in which there is more than one titular nation, are not easy to find. Spain and the UK are sometimes considered to be multi-national states, although they seem to fit better into the category of 'nations-within-nations' (Miller, 2001). It has also often been argued that Belgium belongs to this category, yet one of its three constituent communities (the Flemings) is demographically and electorally dominant. Furthermore, to be considered Flemish (or francophone, or germanophone) is more a matter of language fluency than of ethnic origin. Catalans and Scots have, according to many, also gradually developed less ethnic and more civic conceptions of group belonging.

On the other hand, many countries in Central, Eastern and Southeastern Europe (such as Croatia, Greece, Hungary, Macedonia, Serbia or Slovakia) have an ethnic definition of nationhood, but are officially mono-national, that is, they have only one titular nation, even though (or precisely because) they often officially recognise a number of autochthonous groups as 'national minorities'.⁵ Germany (with the Danes, Frisians and Sorbs, who have a legal minority status in a number of *Länder*), Austria (with its six officially recognised *Volksgruppen*) and Italy (that granted special status for some linguistic minorities in its *regioni autonome*) could also be included in this category, even though they have gradually abandoned a strictly ethno-linguistic definition of what it means to 'be' German, Austrian or Italian (see Stojanović, 2011).

Even though as a result of the 1992–1995 war Bosnian citizens tend to live in more or less ethnically homogenous areas, they enjoy certain group rights wherever they live, including the areas in which they are a statistical minority. This feature is also quite unique in Europe. In Italy, German speakers have no special rights outside South Tyrol. In Germany, the exceptions to electoral law apply only to Danish parties in the Land of Schleswig-Holstein. In Belgium, a French speaker cannot claim nor enjoy any language rights in a Flemish city such as Antwerp. Similarly, if a Swiss German-speaking couple moves, say, to the Italian-speaking canton of Ticino, their children will have no right to attend German-speaking public schools and will be obliged to integrate into exclusively Italian-speaking schools, in spite of the fact that Italian is spoken only by 4% of the Swiss. Such an approach, known as the 'territorial principle', has not been applied in Bosnia and Herzegovina, at least since the seminal 2000 decision of its Constitutional Court that established the principle of the 'collective equality' of constituent peoples across the state.

Finally, to our knowledge, no European democracy apart from Bosnia and Herzegovina lacks a *Staatsvolk*, understood as a group (national, ethnic, linguistic or religious) that is demographically and electorally dominant. Notice that *Staatsvolk* does not necessarily

need to be legally defined as such and yet, according to at least to some authors (O’Leary, 2001, p. 285), it is ‘a necessary condition of stability’ in a liberal democracy. The Swiss constitution, for example, states that French, German, Italian and Romansh are national and official languages.⁶ These languages formally enjoy equal recognition and, thus, no language community is officially a ‘majority’ or a ‘minority’ at the federal level. Nevertheless, the German-speaking Swiss citizens, with a population share of 72%, can be considered as a *Staatsvolk* for present purposes.

The case of Bosnia and Herzegovina is even more complex if we consider that on top of its three ‘constituent peoples’—Serbs, Bosniaks and Croats—there are 17 officially recognised ‘national minorities’, such as the Roma, the Albanians, and the Jews. This official recognition has been granted in 2003 through the specific Law on the Rights of National Minorities.⁷ Nevertheless, they are still structurally discriminated against in many important spheres of life, in particular in the political realm (see, e.g. Hodžić & Stojanović, 2011).

Reserved Seats and Ethnic Parties: By-Products of Consociationalism

One should also note in this context that Bosnia and Herzegovina is a divided society, that is, a society in which ethno-cultural differences ‘are persistent markers of political identity and bases for political mobilization’ (Choudhry, 2008, p. 5). In Bosnia and Herzegovina, in other words, ‘ethno-cultural divisions translate into political fragmentation’ (Choudhry, 2008, p. 5). How can democratic institutions function in such a complex setting? Are they to be devised in order to transcend, or to explicitly recognise and institutionalise the ethno-cultural divisions?

The answers to these questions in the political science literature are numerous, but the dominant tendency is to recognise, rather than to try to overcome the ethno-cultural identities in divided societies. The well-known approach to the challenge of ethno-cultural divisions given by Lijphart (2002) is that the only workable solution is to adopt the consociational model of democracy, which includes four central pillars: power sharing in the executive, group autonomy (possibly via federalism), proportionality and a minority veto. As of 1995 (the Dayton Peace Agreement), Bosnia and Herzegovina adopted this model and all of its prescriptions. Indeed, it is difficult to find another European country, apart from perhaps Belgium, that is more consociational (Bieber, 2006).

Consociationalism in Bosnia and Herzegovina entails a number of elements. First, the country adopted a very rigid system of ethnic quotas and reserved seats. As a matter of fact, in a context in which mutual trust between groups (and their leaders) is lacking, only legally entrenched quotas and reserved seats can guarantee that the provisions of the consociational model, such as power sharing in the executive and proportionality, is respected. Elements of the quota system and the system of reserved seats have been fully applied in Bosnia and Herzegovina first at the state level and then, after 2000, gradually at most levels of government (i.e. in the two entities—the Federation of Bosnia and Herzegovina and Republika Srpska—in each of the 10 cantons of the Federation, in the Brčko District and in the cities of Sarajevo and Mostar), with the exception of municipalities. For example, today, the government of the Republika Srpska must be composed not only of Serbs but also of Bosniak and Croat representatives.

Second, almost all political parties in Bosnia and Herzegovina are mono-ethnic, that is, they are either Bosniak or Croat or Serb parties. Although ethnic parties are not a necessary

feature of a consociational democracy, they do constitute quite an obvious by-product of consociational institutions (especially of party-list proportional representation electoral systems). Indeed, the fact that consociationalism provides incentives for the creation and electoral success of mono-ethnic instead of multi-ethnic parties is something that its critics particularly underline and deplore (Horowitz, 1985; Reilly, 2012). However, there are no ethnic parties in Bosnia and Herzegovina that claim to represent one or another of the 17 national minorities, probably because of their tiny share of the population.

Lack of an equivalent political agency on the part of national minorities, however, did not prevent the Bosnian authorities from extending the logic of quotas and reserved seats by applying it to national minorities. Through amendments to the Electoral Law in 2004 and in 2008, national minorities were granted reserved seats in local (municipal) parliaments to be filled either by independent candidates, candidates of minority organisations or by political parties. As a result, the system became operational in 32 out of 144 municipalities. Similar arrangements for the affirmation of non-constituent identities in the political realm exist at the level of the two entities (see, e.g. reserved seats in the second chambers of the parliaments of the Federation of Bosnia and Herzegovina and of the Republika Srpska), but seats are reserved for the heterogeneous category of ‘others’, which includes national minorities *and* citizens without an ethnic identity or who do not want to declare themselves ethnically. The municipalities, thus, are the only level of government in Bosnia and Herzegovina in which the national minorities *as such* (but not other ‘others’) have been granted political recognition and representation. Note also that the ‘others’ cannot be elected to the state tricephalous state Presidency and to the second chamber of parliament, in which all seats are reserved only for the three constituent peoples (see the 2009 ruling of the European Court of Human Rights in *Sejdić and Finci v. Bosnia and Herzegovina*; Hodžić & Stojanović, 2011).

Central Questions and the Goals of This Special Section

The tripartite structure of the dominant population in Bosnia and Herzegovina is generally complicated with considerations of the balance of power between the constituent peoples and their right to ‘collective equality’. And yet, given the overwhelming numerical dominance of one of the constituent peoples in most municipalities, the position of minorities in local contexts is *de facto* equivalent to that of national minorities in liberal nation states in general. In this sense, while inevitably taking into account the (consociational) specificities of Bosnia and Herzegovina, the analysis of functioning of the structures of representation of minority communities presented in this Special Section has a broader relevance—both beyond local contexts and beyond consociational democracies. Ultimately, the Section addresses a significant gap in the literature, having in mind that the functioning and effects of reserved seats for minorities, unlike gender quotas, for example, have been understudied and subject to little empirical investigation (Bird, 2014).

In this sense, the extension of group rights to national minorities in Bosnia and Herzegovina, including the right to group representation in some political institutions, raises a number of questions.

- (1) How did the main political parties, and in particular the mono-ethnic parties representing each of the three constituent peoples, react to the new requirement to open the political space to representatives of national minorities?

- (2) What is the interplay of patterns of representation between national minorities in a given municipality and constituent peoples who are also a statistical minority in that same municipality?
- (3) To what extent did the so-called descriptive representation of a given minority (i.e. the mere presence of an elected or appointed politician belonging to that group) affect the 'substantive' representation of the specific interests of that same group?
- (4) More generally, in what ways and to what extent did the inclusion of a tiny group of Bosnian citizens into a system of guaranteed representation—after all, not one of the 17 national minorities represent more than 0.25% of the population and, taken together, they make up only 2.42%, according to the 1991 census—introduce a minority perspective into the political system and institutions based on power sharing between the three main groups?

The aim of this Special Section is to address these issues by exploring the patterns of political mobilisation and the representation of ethnic groups in Bosnia and Herzegovina at the local level. The three articles that compose it present an analysis of the current challenges of Bosnian ethno-democracy, especially with regard to the widespread use of ethnic quotas and the possibility, requirements and implications of inclusion and representation of all those citizens (national minorities such as the Roma, the Jews, and other 'others') who are structurally excluded from such a consociational system.

The first article is theoretical since it seeks to conceptualise the links between reserved seats, ethnic parties and substantive minority representation. The second and third articles are empirical and are based on original field research. The authors of the second article have analysed the debates in the state parliament and in a number of municipal assemblies on the introduction of reserved seats for national minorities, asking important question of the reasons, discourse, and arguments behind the introduction of reserved seats for national minorities. The authors of the third article have grounded their analysis on interviews with minority representatives and other relevant actors in selected municipalities of Bosnia and Herzegovina, exploring the workings and effects of reserved seats in practice.

An Overview of the Three Articles

The article by Christina Zuber seeks to clarify, from a theoretical and conceptual point of view, the relationship between reserved seats, political parties and substantive minority representation. In particular, Zuber argues that the party affiliation of a minority representative moderates the impact of reserved seats on substantive representation. Minority and party constituencies can cross-pressure a representative and, thus, may undercut the link between reserved seats and substantive representation. Only in the case of overlap can they allow her to take into account party and minority interests simultaneously. The author's focus on the link between party membership and minority representation induces her to construct a very stimulating typology that covers six theoretical possibilities, ranging from no party affiliation to coinciding, multi-ethnic, partial ethnic, other ethnic and non-ethnic party affiliations. Throughout her article Zuber refers to the adoption of reserved seats for national minorities in Bosnia and Herzegovina in order to illustrate the relevance of the analytical framework that she has developed.

The main goal of the article by Mirna Jusić & Nenad Stojanović is to discern, through an approach based on interpretative policy analysis, the ideas that fuelled the political

arguments used during the debates on the adoption of reserved seats for national minorities in local (municipal) parliaments in Bosnia and Herzegovina. The content analyses of two parliamentary debates at the state level and nine municipal assembly sessions reveal two dominant frames, an ‘obligation frame’ and a ‘constituent peoples frame’. The former refers to the introduction of reserved seats for minorities as an international and legal obligation, while the latter challenges this institution, emphasising the right of the three constituent peoples to have reserved seats in addition to, or in place of, national minorities. A frame suggesting the right of minorities to participation is absent from the parliamentary debate. The article discusses the implications of these findings, with a reference to the functioning of the institution of reserved seats in the long run.

Finally, Edin Hodžić & Boriša Mraović examine the impact of reserved seats for minorities in local parliaments. Their article is based on a comparative qualitative study of eight Bosnian municipalities and its goal is to shed light on the effectiveness of various patterns of political representation of minorities in terms of the actual influence on decision-making, on one hand, and minority representatives’ accountability to their constituency, on the other. The authors argue, first, that reserved seats have had an overall positive, but rather modest impact in terms of strengthening the political voice of minorities in decision-making. Second, they claim that the party affiliation of minority representatives is a crucial factor in establishing and effectively maintaining the relationship of substantive representation. Depending on the nature of minority communities—constituent peoples in minority situations or national minorities proper—the lack of party affiliation and an ethnic party framework tend to positively affect substantive minority representation.

Conclusion

By focusing upon the case of Bosnia and Herzegovina—whose ethnocracy is a *unicum* in Europe in terms of the relationship between nationhood, statehood and democracy—this Special Section has set out to analyse the impact of the ethnic approach in a liberal democracy. The Bosnian example shows that the legal recognition of ethnic groups, the choice of institutions that provide incentives for the creation and the electoral success of ethnic parties, and the adoption of guarantees such as reserved seats for political participation and ethnic group representation, can and indeed has opened Pandora’s box. Once the three main Bosnian communities were recognised and protected as ‘constituent peoples’, the logic of this approach to politicising and institutionalising ethnicity could not but be further extended to the 17 national minorities, even though nowadays their total population share hardly exceeds 2%.

The articles of this Special Section explore the party strategies, political discourses and the various conceptions of political representation triggered by a reform of the electoral law that introduced the possibility for Bosnian municipalities to reserve seats for members of national minorities. The three articles combine an original theoretical model with empirical fieldwork; a model that can be of interest for other multi-ethnic countries, in Europe and beyond. Even though the focus of the Special Section is placed on the national minorities of Bosnia and Herzegovina, a systematic theorisation of the relationship between reserved seats, party affiliation and substantive representation of minorities, combined with an empirically founded discussion of the two basic questions—the *why* and the *how*—of political representation of minorities, could be understood

as a lens through which we can better understand the functioning and implications of the ethnic approach to democracy, on the one hand, and the role and effects of reserved seats for ethnic groups, on the other.

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Notes

1. The Constitution of Bosnia and Herzegovina (Preamble): 'Bosnia[k]s, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows ...' (retrieved March 16, 2015, from http://www.servat.unibe.ch/icl/bk00000_.html).
2. Some believe that the results of the October 2013 census—which will not be disclosed before 2015—might show that the Bosniaks are now in the absolute majority. In the last census (March 1991), the Bosniaks (classified as 'Muslims' at the time) had a population share of 43%.
3. See the 2000 ruling of the Constitutional Court of Bosnia and Herzegovina on the 'constituent status of the three peoples' (U-5/98).
4. For example, a person who declares herself as a Jew or a Roma cannot occupy positions reserved only for Bosniaks, Croats and Serbs. See *Sejdić and Finci v. Bosnia and Herzegovina*, the ruling of the European Court of Human Rights, 22 December 2009.
5. The Slovak Constitution (Preamble): 'We, the Slovak nation, ... proceeding from the natural right of nations to self-determination, together with members of national minorities and ethnic groups living on the territory of the Slovak Republic, ... adopt through our representatives the following Constitution' (retrieved March 16, 2015, from http://www.servat.unibe.ch/icl/lo00000_.html).
6. Romansh, however, is official only in the relations between the Swiss federal authorities and Romansh speakers, so it is sometimes seen as 'semi-official'.
7. The ethnic approach is quite evident in Art. 3 of the Law (our emphases):

A national minority, in terms of this Law, shall be a part of the population-citizens of [Bosnia and Herzegovina] that *does not belong* to any of three constituent peoples and it shall include people of the *same or similar ethnic origin*, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics. [Bosnia and Herzegovina] shall protect the status and equality of members of national minorities as follows: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks, Ukrainians and other who meet requirements referred to in Paragraph 1 of this Article. (retrieved March 16, 2015, from <http://bit.ly/1j9RMRW>)

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