Political marginalization of "Others" in consociational regimes

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AUFSÄTZE

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Abstract Polities that follow the consociational model of democracy adopt power-sharing provisions, guaranteeing a certain number of seats to representatives of their societies' main ethnic groups. Yet in all hardcore ("corporate") consociational systems—Belgium, Bosnia and Herzegovina, Burundi, Lebanon, Northern Ireland, and South Tyrol—we also find "Others": citizens who do not belong to any of the main ethnic segments. These Others are typically subjected to patterns of political marginalisation and exclusion that are problematic for a liberal democracy. In some cases, such patterns have been deemed discriminatory by courts, most notably in several rulings of the European Court of Human Rights concerning the position of Others in Bosnia and Herzegovina. This article provides a conceptual framework for identifying Others in consociational systems and presents the first comprehensive overview of the legal and political status of Others in the six corporate consociations.

Keywords Consociation · Representation · Ethnic quotas · Elections · Discrimination

Politische Marginalisierung von „Anderen" in konsoziationalen Systemen

Zusammenfassung Politische Systeme, die dem Modell der konsoziationalen Demokratie folgen, treffen Vorkehrungen zur Machtteilung, die gewährleisten, dass die Repräsentanten der wichtigsten ethnischen Gruppen eine bestimmte Anzahl an Sitzen erhalten. Jedoch finden sich in allen eingefleischten („korporatistischen") konsoziationalen Systemen wie Belgien, Bosnien und Herzegowina, Burundi, Libanon, Nordirland und Südtirol auch „die Anderen": Bürger, die nicht zu einer

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der ethnischen Hauptgruppen gehören. Diese „Anderen“ sind oftmals von Mustern politischer Marginalisierung und Ausgrenzung betroffen, was sich für liberale Demokratien als problematisch erweist. In manchen Fällen haben Gerichte solche Muster für diskriminierend befunden, so insbesondere der Europäische Gerichtshof für Menschenrechte in einer Reihe von Entscheidungen bezüglich der Position der „Anderen“ in Bosnien und Herzegowina. Dieser Artikel bietet einen konzeptionellen Rahmen, um „die Anderen“ in konsoziationalen Systemen identifizieren zu können. Darüber hinaus präsentiert er als erster einen umfassenden Überblick über den legalen und politischen Status „der Anderen“ in sechs korporatistischen Konsoziationen.

Schlüsselwörter Konsoziation · Repräsentation · Ethnischer Proporz · Wahlen · Diskriminierung

1 Introduction

Imagine a country where every person must declare his or her ethnic identity in the census by choosing one of three pre-determined ethnic groups. The information is then used not only for statistical purposes, but also recorded alongside his or her name in an ethnic register. Public officials consult the register to check the “authentic” ethnic identity of citizens who seek political office or apply for jobs in the civil service, so that such positions can be allocated on a proportional basis among the ethnic groups. For a period of 10 years, until the next census, citizens cannot change their ethnic identity. Individuals who refuse to disclose their identity during the census are barred from running as candidates in elections.

Few would claim, I submit, that such a country respects some basic premises and promises of liberal democracy, such as individual liberty and self-determination, non-discrimination, and political equality (Beitz 1989; Dahl 1998, p. 37). And yet countries that hardly anyone would consider illiberal or undemocratic—such as Belgium, the United Kingdom, and Italy—contain provisions, in some of their institutions or at least some portions of their territory, that resemble the description in the opening paragraph. The paragraph actually describes the functioning of the mechanism of “ethnic proportionality” (Wolff 2004, p. 398) in the Italian province of South Tyrol (*Alto Adige* or *Südtirol*), in which all offices in elected and non-elected public institutions are allocated, on a proportional basis, to three ethno-linguistic groups: the Germans, the Italians and the Ladins (Graziadei 2016, p. 79; Lantschner and Poggeschi 2008; Pallaver 2014). Individuals who refuse affiliation with one of the three groups are not permitted to run for political office and may face legal discrimination in public employment, housing subsidies and other spheres of political and social life.[1] Similarly, in Bosnia and Herzegovina, Jews, Roma and other “Others” are not allowed to run for the Presidency and cannot become members of

[1] This system was applied in the 1981, 1991 and 2001 censuses in South Tyrol. It was a bit relaxed in 2005 (see § 3.6). Quite emblematic in this respect is the case of Alex Langer (1946–1995), who opposed the nominal ethnic census in South Tyrol and led the movement of “ethnic objectors” in the 1980s (Lantschner and Poggeschi 2008, p. 230). As a consequence, in 1981 he lost his teaching position in a public school.

the second chamber of Parliament (Graziadei 2016; Hodžić and Stojanović 2011; Milanovic 2010).

In other places, a compulsory group designation is required *after* elections. For example, all members of the Belgian Parliament are obliged to declare themselves as French or Dutch speakers. In Northern Ireland, Assembly members are allowed to declare themselves as "Others" but will, on some key legislative issues, have less (i. e. unequal) voting power compared to their colleagues who have chosen either the "nationalist" or "unionist" designation. Such rules "discriminate against [Others]" insofar as "[t]here is an incentive for voters to choose nationalists or unionists, because members from these groups will, *ceteris paribus*, be more pivotal than others" (McGarry and O'Leary 2009, pp. 34, 71).

Polities that officially recognize the existence of ethnic groups and assign positions on the basis of identity typically follow the *consociational* model of democracy (Lijphart 1977, 2004; see also Andeweg 2015; O'Leary 2005).[2] According to this model, "all significant segments" (O'Leary 2005, p. 12) that comprise a society must share power in the executive and enjoy a degree of group autonomy. These are the primary characteristics of consociationalism (Lijphart 2004, p. 97); the secondary characteristics are proportionality (especially with regard to the legislative electoral system and the allocation of public positions and resources) and minority veto on issues of vital importance to minorities (Lijphart 2004, p. 107, n. 1).[3]

What happens under such a regime if a person does *not* belong, or does not want to belong, to *any* of the recognized groups? The status of these individuals—called "Others" in this article—should be of utmost concern in liberal democracies, considering the importance of individual rights and liberties in liberal-democratic theory.

Yet liberal democrats are confronted with a dilemma. On the one hand, they must respect the high standards of international law that protect individual rights and liberties. In particular, they oppose discrimination against citizens who do not (or choose not) to belong to an officially recognized group. On the other hand, the very purpose of consociational regimes is to make democracy possible—that is, peaceful and stable over time—in spite of ethnic heterogeneity. The political agreement of the main (or, at least, of *significant*) ethno-cultural segments is considered necessary for the success of consociational arrangements. Therefore, consociationalists—both scholars and politicians—are not really interested in the legal status and practical concerns of Others. For example, a leading academic advocate of consociationalism, Brendan

He was later elected a member of the European Parliament but in 1995 he was denied the right to run for the position of mayor of Bolzano, the provincial capital of South Tyrol.

[2] This article assumes that the reader has some general knowledge of consociational theory and the academic controversies that it has sparked ever since the early 1970s. For a helpful overview of the scholarly debate, covering the period up through the late 1990s, see Andeweg (2000); for an updated (but much shorter) overview, see Andeweg (2015).

[3] Not all consociationalists agree with this hierarchy. For O'Leary (2006, p. xviii), for example, executive power sharing, group autonomy and proportionality are the "essential features" of the model, while veto powers are only a "contingent feature"—frequently accompanying the essential features but not required for accordance with the model. Generally speaking, one should keep in mind that the exact content and contours of the consociational model of democracy have historically been fuzzy and have changed over time (see Bogaards 2000; Dixon 2011; Halpern 1986; Lustick 1997). In Andeweg's (2015, p. 693) words, its main concepts have been defined with "vagueness and elasticity".

O'Leary, in a volume co-authored with Christopher McCrudden, has fiercely criticized the role of courts in which consociational agreements are challenged on the basis of major international conventions and human rights treaties—instruments of basic principles of liberal democracy (McCrudden and O'Leary 2013). Ian O'Flynn (2010, p. 283) rightly observes that empirical political scientists and consociational scholars such as O'Leary are "primarily concerned with political stability". As for consociational *politicians*, a 2016 report of Minority Rights Group International deplores the fact that Bosnian authorities have been "reluctant" to implement a 2009 ruling of the European Court for Human Rights (ECtHR) that had found a violation of the European Convention on Human Rights (ECHR) with regard to discrimination against Jews, Roma and other Others in Bosnia and Herzegovina (MRGI 2016; see also § 3.2 below).

Many scholars have challenged the conceptual premises, normative prescriptions, empirical assumptions and constitutional-design recommendations of the consociational model of democracy.[4] However, the conceptual and definitional challenges posed by the existence of Others have not yet received a systematic treatment in the literature. That said, the fundamental tension that the question of Others raises in consociational regimes—individual rights vs. group rights—has been a frequent topic of controversy in political theory, especially in debates over "liberalism vs. communitarianism", multiculturalism and liberal nationalism (for an overview, see Jones 2016). Thinkers like Young (1990) and Kymlicka (1995), for example, tried to defend group rights from within a liberal framework. In particular, they argued in favour of so-called "special representation rights" (Kymlicka 1995, pp. 31–33, Chap. 7), such as quotas and reserved seats, that parallel the power-sharing arrangements in consociational theory. The "multiculturalist" approach has drawn fierce criticism from liberal egalitarians (e. g., Barry 2001; Jaggar 1999). They have argued that institutionalizing group rights entails an essentialist view of identity and that consociationalism, in particular, "freezes relationship between communities, because [...] it sets up incentives for individuals to continue to attach themselves primarily to their group" (Phillips 2007, p. 163). Subsequent elaborations of multiculturalism have addressed that problem by stressing "the rights of individuals, not groups" (Phillips 2007, pp. 162–166) and by providing an account of cultural identity that is resistant to the charge of essentialism (Patten 2014, Chap. 2). In other words, the theoretical bases of the present article can be found in this broader normative literature that has explored the tension between individual rights and group rights.

The problems with the group-centred logic of consociationalism have not been raised only by political theorists. They also underpin the arguments put forward by scholars of the so-called "centripetalist" approach (Horowitz 1985; Reilly and Reynolds 1999, pp. 32–36; Sisk 1995, p. 19). Centripetalists have proposed alternative institutions—especially electoral systems such as Alternative Vote—that avoid assigning special representation rights to groups. Lijphart has acknowledged such critiques by making the distinction between "pre-determination" and "self-determination" in consociational systems (Lijphart 2008). In pre-determined systems the

[4] See, e. g., Barry (1975); Bogaards (2000); Halpern (1986); Horowitz (1985); Lustick (1997).

groups that are to share power are identified in advance, whereas self-determination allows individuals to manifest themselves as groups, if they wish to do so, most notably via (ethnic) political parties and an electoral system based on proportional representation. Lijphart indicates seven advantages of self-determination and only one "genuine drawback" (it precludes the application of the principle of minority overrepresentation; Lijphart 2008, p. 74). Among the advantages, I highlight the following:

> Pre-determination entails not only *potential discrimination* against groups but, as a rule, also the assignment of individuals to specific groups. Individuals may well *object* to such labeling. [...] Self-determination gives *equal chances* not only to all ethnic or other segments, large or small, in a plural society but also to groups and individuals who explicitly *reject* the idea that society should be organized on segmental basis. (Lijphart 2008, p. 72; my emphasis)

In other words, Lijphart acknowledges that certain versions of consociationalism can be discriminatory against individuals and/or minority groups that have not been included in the power sharing system—that is, against Others. Indeed, the problems raised by the presence of Others have received critical attention by scholars commenting on one or the other consociational settlement (for Northern Ireland, see O'Flynn 2003; Wilson 2012; for Bosnia, see Hodžić and Stojanović 2011; Milanovic 2010; Mujkic 2007). But to date we lack a comprehensive overview of the issue across the various cases.

Against this background, in this article I first (Sect. 2) construct, define and explain the possible typologies of Others. My aim is to set forth the outline of a conceptual framework that sheds light on the main issues of practical controversy with regard to the political marginalization, exclusion and possibly discrimination against Others in consociational regimes. I begin Sect. 3 by distinguishing between "corporate" and "liberal" consociations; I then (§ 3.1–§ 3.6) focus on the situation of Others in six corporate consociational systems (Belgium, Bosnia and Herzegovina, Burundi, Lebanon, Northern Ireland, and South Tyrol)[5] before providing an overview of the existing solutions (§ 3.7). In Sect. 4 I conclude by suggesting that solving the challenge that Others pose to corporate consociational systems could become a trigger for democratization of such regimes.

2 Who are the Others?

Who are the Others in consociational regimes? The simplest answer is that Others are all those citizens who live in a consociational system but do not belong to any of the "significant" segments of the society. So, for example, in Bosnia and Herzegovina the Others are the citizens who do not belong to (or identify themselves with) one of the three "constituent peoples": the Bosniaks, the Croats or the Serbs.

[5] I use the term "consociational system", or "consociational regime", as Bosnia, Lebanon and, especially, Burundi are not considered "full democracies" (see, e. g., the Polity scores available from http://www.systemicpeace.org/polity/polity4.htm).

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

- *Citizens vs. foreigners*. Most countries contain a certain number of immigrants. Some of them still hold only foreign citizenship, while others have been naturalized. The non-citizens (of their host country) are clearly Others. The situation is less clear-cut, though, for the naturalized citizens. 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 instance, it suffices that a person declares her "affiliation" with (as distinct from "belonging" to) the German, Italian or Ladin group.
- *Mono-ethnic vs. bi-ethnic*. If we turn to *native* groups belonging to the category of Others, we can distinguish between mono-ethnic and bi-ethnic groups. The Bosnian Roma, for example, can be considered as mono-ethnic. The children from ethnically mixed marriages are, by definition, bi-ethnic. They often can choose to identify themselves with the ethnic group of one of their parents, but they can also opt not to choose between the two ethnicities and, thus, to become Others.
- *Ethnic vs. non-ethnic*. Some citizens may openly embrace a non-ethnic (sometimes called "civic") 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 Others, they deliberately manifest a political preference for a cross-community identity. Something similar happens in Bosnia and Herzegovina when people declare themselves as "Bosnians" (or as "Yugoslavs", until 1992). These individuals may (but do not necessarily) come from ethnically mixed families. In fact, they may have a relatively unambiguous[6] ethnic background but still refuse to identify themselves with that ethnicity for ideological, political or other reasons (for example, because they believe in a non-ethnic civic concept of over-arching nationality). Indeed, some individuals simply do not want to have an ethnic identity. We can call them "ethnic objectors", following the term *obiettori etnici* coined in South Tyrol in the early 1980s (see Footnote 1).
- *Recognized vs. non-recognized*. Some ethnic groups belonging to the category of Others are officially recognized. This recognition can take many forms. Groups can have reserved seats in Parliament, as do the Twa in both chambers of the Burundian Parliament or German speakers in Belgium's Senate. Or they can have a special autonomous status, as the Druze do in Lebanon. In Bosnia and Herzegovina a special law on national minorities recognizes seventeen groups (Roma, Albanians, Jews, Ukrainians, etc.). Yet other groups, such as the very small Ganwa group in Burundi, or the Bosnians (*sic*) in Bosnia, do not receive official recognition.

Table 1 presents an overview of the conceptual roadmap that I have constructed so far.

[6] By "unambiguous" I do not refer to genetics but to the idea that people typically use a descent-based approach to identify the (supposed) ethnicity of themselves and as well as that of other individuals living in their society (see Chandra 2006).

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

Official consociational segments	Others				
	Mono-ethnic		Bi-ethnic	Non-ethnic or civic	Outsiders (with citizenship)
	Recognized	Non-recognized	Non-recognized	Non-recognized	Non-recognized
E. g. nationalists and unionists in N. Ireland	E. g. Twa in Burundi; Roma in Bosnia; Germans in Belgium; Jews in Lebanon	E. g. Ganwa in Burundi	E. g. Children with unknown father in Burundi	E. g. Bosnians in Bosnia; ethnic objectors in S. Tyrol and in Bosnia	E. g. Arabs in Burundi

Now that we have a better picture of who the Others are, in the next section I present and discuss the six selected cases in more detail by focusing particularly on constitutional provisions. First, though, I should say more about the choice of these cases.

3 The Others in six corporate consociational regimes

The recent literature on consociational democracy makes the distinction between "corporate" and "liberal" strategies for implementing consociational settlements.[7] The main difference is that a corporate consociation "accommodates groups according to ascriptive criteria, and rests on the assumption that group identities are fixed, and that groups are both internally homogeneous and externally bounded". It corresponds, thus, to Lijphart's (2008) concept of "pre-determination". A liberal consociation, on the other hand, "rewards whatever salient political identities emerge in democratic elections, whether these are based on ethnic groups, or on sub-group or trans-groups identities" (McGarry 2007, p. 172). Again, this follows the logic of "self-determined" systems as defined by Lijphart (2008).

The distinction also turns on the question of "whether to constitutionally identify the groups entitled to a share of power" (McCulloch 2014, p. 502). According to McCulloch (2014, p. 507, Table 1), only five contemporary consociations follow the corporate logic: Bosnia and Herzegovina, Belgium, Burundi, Lebanon, and South Tyrol. In addition, she asserts that in four cases—Kenya (since 2008), Macedonia, Northern Ireland, and Switzerland—*both* strategies have been implemented.

Given the definitions of the corporate and liberal categories of consociations, it is clear that the challenge of Others primarily concerns *corporate* consociations. In this article I will explore *all* contemporary corporate consociations (Belgium, Bosnia and Herzegovina, Burundi, Lebanon, and South Tyrol). In addition, a closer look at the four cases in which both strategies have been implemented reveals that it

[7] See Cordell and Wolff (2009, Chap. 7); McCulloch (2014); McGarry (2007); McGarry and O'Leary (2009); O'Leary (2005, pp. 15–16).

makes sense to include in this analysis the case of Northern Ireland,[8] but not Kenya, Macedonia or Switzerland.[9]

3.1 Belgium

The Belgian Constitution (Article 99) establishes that half of the ministers in the federal government must be from the Dutch-speaking (Flemish) community and half from the French-speaking one.[10] Also, each member of the first chamber of Parliament is obliged to declare his or her linguistic affiliation. This is important for the implementation of some constitutional provisions, in particular the right of the language groups to veto certain issues of "vital" importance (the so-called "alarm bell" procedure; Article 43, paragraph 1).

It is clear, therefore, that the Dutch and French-speaking communities are the only consociational segments in Belgium. This is particularly problematic from the point of view of Belgium's autochthonous German linguistic group. German is one of the country's three official languages and the German-speaking community has a form of group autonomy (exercised via the *Parlament des Deutschsprachigen Gemeinschaft Belgiens*).[11] What distinguishes the German-speaking community from its Dutch and French counterparts is its quite small demographic size (77,000 inhabitants, in 2017, or less than 1% of the population of Belgium). It is barely politically relevant, in the sense that the political survival of Belgium depends only on the balance of power between the Flemish (approximately 60% of the population) and French speakers (approximately 40%; see Stangherlin 2005). As for other Others—especially immigrant communities—in Belgium: they typically speak one or another of the two main languages and are thus expected to join, for political-institutional purposes, either the Flemish or the Francophone community.

The only institution in which non-Flemish and non-Francophone citizens have a guaranteed seat is the second chamber of Parliament—the Senate, where one of

[8] Scholars disagree on the liberal vs. corporate interpretation of consociationalism in Northern Ireland. For McGarry and O'Leary (2006), the 1998 Belfast Agreement is generally "liberal"(pp. 274, 277), but they concede that the Agreement contains a number of "corporate principles" that they would like to see "removed" (p. 273). For Taylor (2006, p. 217), however, the Agreement "rests on and promotes an ethno-national group-based understanding of politics that is inherently illiberal". One of the reasons for seeing it as illiberal is precisely the official designation of Others in the Northern Ireland Assembly and the fact that on important issues their votes count less than the votes of the Assembly members who are designated as nationalists or unionists. As O'Flynn (2003, p. 44) notes: "By effectively discounting the votes of the 'others' on certain important issues, the agreement privileges national over individual identities and fails to provide sufficient protection for individuals and groups whose needs and interests cannot be so neatly classified."

[9] Kenya's agreement on power sharing is relatively recent and does not explicitly name ethnic groups (McCulloch 2014, p. 506). In Macedonia, the predominant logic is clearly liberal (Bieber 2005, p. 99; Wilson 2012, Chap. 3). In Switzerland, a very mild form of corporate linguistic consociation can be found only in the bilingual canton of Berne but not at the federal level (Stojanović 2017). Generally speaking, Switzerland is a country "whose consociational credentials have been called into question the most" (Andeweg 2015, p. 693; see also Barry 1975; Halpern 1986).

[10] The Constitution of Belgium, available from http://www.servat.unibe.ch/icl/be00000_.html (accessed 1 December 2017).

[11] The Parliament of the German-speaking community of Belgium (http://www.pdg.be).

the 71 seats is reserved for a person nominated by the Parliament of the German-speaking community, who must at the same time be a member of that Parliament.[12]

Within Belgium, a further interesting case 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 estimates, however, the Dutch speakers' share of the Brussels population is only about 15%. Stefan Wolff (2004) considers Brussels, along with Northern Ireland and South Tyrol, as an example of "regional consociation". Quotas for language groups exist in the regional Parliament: 72 out of 89 members of the regional assembly must be French speakers and 17 must be Dutch speakers.[13] All parties, and as a consequence all candidates, must register as either French or Dutch-speaking. The same applies to voters. Every enfranchised citizen of Brussels is free to choose to vote either for Francophone or Dutch-speaking parties and candidates, but they *must* make a choice of one or the other for the entire ballot. Further, a quota system is applied to the regional cabinet: there must be two Francophone and two Dutch-speaking ministers.[14] The head of the cabinet comes from the largest linguistic community, i. e. the Francophone one. In addition, there are three secretaries of state and one of them must be a Dutch speaker.

3.2 Bosnia and Herzegovina

According to the 2013 census, 130,054 (3.7%) citizens of Bosnia and Herzegovina belong to the general category of Others, that is, to none of the three main ethnic segments (Bosniaks: 50.1%; Croats: 15.4%; Serbs 30.8%).[15] In response to a lawsuit filled by two Bosnian citizens—prominent members of the Jewish and the Roma communities, Jakob Finci and Dervo Sejdić—in 2009 the ECtHR ruled that two Bosnian institutions—the state Presidency and the second chamber of Parliament (the House of Peoples)—do not respect the ECHR because they reserve seats only for citizens belonging to the three constitutional peoples (Milanovic 2010). It should be also noted that Others are legally banned from running for these two specific political offices, but not other offices. For example, they can run for the first chamber of Parliament and for local, cantonal and entity parliaments; they can be appointed

[12] The Constitution of Belgium, Article 67.

[13] 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*. http://www.elections.fgov.be/fileadmin/user_upload/Elections2014/FR/Electeurs/reglementation/lois/12-JANVIER-1989_Vers20140215.pdf (accessed 3 December 2017).

[14] See http://www.bruxelles.irisnet.be/a-propos-de-la-region/le-gouvernement-regional (accessed 3 December 2017).

[15] Source: http://www.popis.gov.ba/popis2013/knjige.php?id=2 (accessed 3 December 2017). The census data reveals that many Others are individuals who refuse ethnic categorization. A plurality of these prefer to declare a civic and geographical identity (Bosnian: 37,110; Bosnian and Herzegovian: 11,406; Yugoslav: 2570) or explicitly refuse to declare an ethnic identity ("no declaration": 27,055; "unknown": 6460; "undetermined": 309). But we also find 352 "Others" (*sic*), 89 cosmopolites, 68 Europeans, 65 "terrestrials" (*zemljanin/zemljanka*) and even 55 "extraterrestrials" (sic; *vanzemaljac/vanzemaljka*). There are also people who declare their identification with one of the recognized "national minorities", such as Roma (12,583), Albanian (2659) or Jewish (274), or put forward their religious identity (Muslims: 12,121; [Christian] Orthodox: 826; Catholic: 337).

to the cabinet (indeed, between 2006 and 2010 the Bosnian foreign minister was of Jewish background); et cetera. Furthermore, nothing prevents an Other who wishes to run for the Presidency or to be appointed to the second chamber of Parliament to declare herself, only and exclusively for these purposes, as a member of one of the three constituent peoples. So one could argue that the real extent of the political discrimination suffered by Others is very limited, especially when considered in the context of preserving the stability of democratic institutions and peace among the significant segments of Bosnian society via the consociational arrangements. After all, Bosnia is a fragile state and the ethnic composition of the institutions under scrutiny was agreed upon in 1995 in Dayton, Ohio in order to terminate a war (McCrudden and O'Leary 2013, Chap. 2). And yet the ECtHR obliged the Bosnian politicians to reform their institutions. The implementation of this decision has been one of the main political issues in Bosnia since 2009 (Merdzanovic 2015, pp. 221–223).

One might think that the Sejdić and Finci case was particularly strong because it was filed by publicly active, well-known representatives of two autochthonous and historically vulnerable Bosnian communities, both of which are recognized as national minorities. It was unclear, therefore, whether the ECtHR would have come to such a decision if *another* citizen identifying as an Other—in particular someone belonging to *none* of the seventeen official national minorities—had sued Bosnia and Herzegovina. This open question was resolved on 15 July 2014, when the ECtHR maintained its position in its judgment on *Zornić vs. Bosnia and Herzegovina* by accepting the appeal of a Bosnian citizen, Azra Zornić, who "refuses to declare affiliation to any particular ethnic group but declares herself as a citizen of Bosnia and Herzegovina" (see also Graziadei 2016).

> Like the applicants in the latter 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 [an] exclusion had pursued an aim broadly compatible with the European Convention, namely that of restoring peace. [...] 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 [...].[16]

Note that, according to the conceptual framework presented in the previous section of the present article, Azra Zornić belongs to the sub-category of Others called "ethnic objectors", whereas Dervo Sejdić and Jakob Finci belong to the sub-category "mono-ethnic recognized group". But these distinctions were not salient for the ECtHR:

[16] ECtHR, application no. 3681/06, available from http://hudoc.echr.coe.int/eng?i=001-145566 (accessed 2 December 2017).

> 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)[17]

This judgment of the ECtHR confirms that, once peace has been established, concerns based on fundamental rights and freedoms of citizens have more weight than consociational concerns, which assign priority to constituent segments of a divided society (see also Mujkic 2007, pp. 125–126, n. 11). The judgment, therefore, further strengthens the position of Others in Bosnia and might have consequences for other consociational regimes as well.

3.3 Burundi

The current political system of Burundi, based on the peace agreements signed in Arusha in 2000 and Pretoria in 2003, follows the consociational model of democracy (Lemarchand 2007; Vandeginste 2017). Political positions are divided between the two main ethnic groups: the Hutu majority of about 85% and the Tutsi minority of about 14% (McCulloch 2009, p. 125). The tiny Twa minority of about 1% also enjoys legal protection.[18]

In the 2005 Constitution of Burundi ethnic (and gender) quotas are 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, p. 12; quoted in McCulloch 2009, p. 133).

The National Assembly, the first chamber of Parliament, is composed "of at least one hundred Deputies 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% female) is mandated for the composition of the cabinet (Article 129). However, a parity ratio (50% Hutu, 50% Tutsi), though not specified in the Constitution, has been established in the army and in the Senate. In combination with qualified majority requirements in Parliament, this grants *de facto* veto power to the Tutsi (McCulloch 2009, p. 132; Samii 2013, p. 561; Vandeginste 2017, pp. 170–171).

If the results of elections do not reflect these percentages, the National Assembly "proceeds to redress the corresponding [*afférents*] disequilibrium by means of the mechanism of co-optation specified by the electoral code" (Article 129). Furthermore, the Constitution states that candidates "must be of Burundian nationality *and origin*" (Article 165, emphasis added).

[17] Ibid.

[18] These population shares should be regarded with caution because they represent "commonly accepted approximations as no formal census has taken place in the post-independence period" (McCulloch 2009, p. 125).

The electoral system for the first chamber is closed-list PR (Article 168). The party lists "must have a multi-ethnic character and take into account the equilibrium between 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". This means that Hutu parties typically have one Tutsi candidate ranked in second or third position on the ballot. The same applies to Tutsi parties. This system, as Vandeginste (2017, p. 178) notes, "adds an important centripetal dimension to ethnic power-sharing in Burundi".

In the second chamber, the Senate, Hutu and Tutsi ethnic quotas are not explicitly mandated. 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 former Presidents, all senators are appointed in the 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". This practice produces parity between the Tutsi and the Hutu in the Senate (McCulloch 2009, p. 132; Vandeginste 2017, p. 170).

What is the situation for Others in Burundi? Are there any 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 with any of the three official groups (even though some see them as a sub-ethnicity of the Tutsi) but instead consider themselves descendants of royal families who ruled over Burundi in the past centuries. After the Arusha peace agreement they protested their omission from the new Constitution and demanded inclusion in the quota system.[19] Second, there are citizens of foreign origin, naturalized as Burundi citizens. Some of them have a Burundi mother, but since under Burundi's social definition ethnicity is transmitted via the paternal line, these citizens are seen as Others. Third, there is a community of Arab origin, whose ancestors came to Burundi from Oman and Yemen more than a century ago. Those who have received Burundian citizenship do not identify themselves with any of the three official ethnic groups.[20] 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 adopted 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 fathers are. Generally speaking, however, the situation of Others goes unmentioned in academic writings on Burundi (e. g., Vandeginste 2017).

The Electoral Code does not clearly stipulate how officials are to know, and (if necessary) verify, the ethnicity of candidates. Every candidate must present to the Independent National Electoral Commission (CENI) his or her electoral application

[19] Source: 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.

[20] Source: Athanase Karayenga, independent journalist in Burundi and international consultant in media and communication (personal communication via email, 21 January 2014 and 29 July 2015).

(*dossier de candidature*) which contains various documents (a CV, a copy of his or her identity card, etc.), none of which explicitly mentions ethnic affiliation.[21] In practice, however, candidates declare their ethnicity to the CENI when they deliver their applications. The list of all candidates with corresponding information—including ethnicity—is published in each electoral district well before elections.[22]

In Burundi, family and social networks ensure that "the whole village and the surrounding villages know the ethnicity of everyone".[23] A politician, therefore, cannot dissimulate his or her ethnicity. But some Hutu, and occasionally Twa, have run for office as Tutsi in order to benefit from the quota for the latter group. Even though most people knew that these candidates were not "true" Tutsi, it was not possible to legally sanction this (apparent) abuse of the ethnic quota system.[24]

3.4 Lebanon

The current Lebanese Constitution is based on the Ta'if (or Taef) Peace Agreement of 1989, which facilitated the end of the civil war (1975–1990) in the country[25], and on the Doha Agreement of 2008 (Kerr 2005, Chap. 7; Salamey 2014). The preamble of the Constitution (Item h) states that "the suppression of political confessionalism is an essential goal", which is to be achieved gradually. "Political confessionalism" refers here to the distribution of posts in state institutions between Muslims and Christians. Article 12 stipulates that recruitment in the civil service should be exclusively merit-based. The sole exceptions are the highest civil servants, among whom Muslims and Christians must be more or less equally represented.[26]

Currently, the Parliament consists of only one chamber (the House of Representatives) with 128 members. The system of confessional (or "sectarian") quotas in Parliament is regulated in detail under Article 24 of the Constitution. However, this article is preceded by an important provision, stipulating that the quota system is of a provisional, not a 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 professed as a high-priority constitutional goal of the Lebanese Republic, however difficult it may be to realise in

[21] Electoral Code of Burundi (Loi n° 1/20 du 3 juin 2014 portant sur révision de la Loi n° 1/22 du 18 septembre 2009 portant Code Electoral), Article 101. http://www.ceniburundi.bi/IMG/pdf/REPUBLIQUE_DU_BURUNDI_NOUVEAU_code_electoral_par_la_PRESIDENCE.pdf (accessed 20 March 2016).

[22] Source: Jean-Claude Mporamazina (personal communication via email, 29 July 2015).

[23] Ibid.

[24] Ibid.

[25] I use the official French version of the Constitution of Lebanon, available from http://democratie.francophonie.org/IMG/pdf/Liban.pdf (accessed 23 May 2016). It is possible that some terms in Arabic could be translated differently into English.

[26] The Constitution of Lebanon, Article 94.

practice, precisely because of the deep divisions in society along religious/political lines.[27]

Meanwhile, the quota system reflecting a consociational model of democracy is based on two principles: (a) parity between Christians and Muslims, i. e. 64 representatives from each community, and (b) proportional (commensurate) representation of different sects *within* Christian and Muslim groups (see Kerr 2005, p. 161). An additional principle (c) of proportional representation for all electoral districts has also been introduced Horn (2008).

The principle of power sharing is applied to the three highest offices of the Lebanese political system. The Presidency is reserved for a Maronite Christian, whereas Muslims hold the positions of Prime Minister (who must be a Sunni) and the Speaker of Parliament (who must be a Shi'ite) (Salamey 2014, p. 11). The various religious "sects" must be fairly represented in the cabinet (El Machnouk 2018, p. 18, n. 41).[28]

Therefore, the main segments in the Lebanese consociational regime are (a) Maronite Christians, (b) Sunni Muslims, and (c) Shi'ite Muslims. All other confessions belong to the category of Others. Out of 64 seats reserved for the category of Muslims, the Sunnis and the Shi'ites have 27 seats each. The smaller communities considered (albeit not undisputedly) as sub-groups of Muslims are allocated ten seats: eight seats are reserved for the Druze and two for the Alawites. Of the 64 seats reserved for the category of 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" Christians.

Lebanon, thus, applies a complex confessional electoral system which does reserve seats for Others belonging to Christian and Muslim denominations, but *not for any other Others*. In fact, a total of 18 "sects" (including the Jews) are officially recognized by law, but only 11 have sufficient votes to receive reserved seats.[29] Still, there is no explicit provision in the Constitution referring to these other Others.[30]

Although the political system of Lebanon has for decades been a constant target for criticism by international bodies regarding the protection of human rights, the prospects of it being abandoned have seemed unwaveringly dim.[31] In recent years there have been many unsuccessful attempts to reform the electoral law (for an

[27] 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, p. 190).

[28] 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).

[29] Source: Imad Salamey, Lebanese American University (personal communication via email, 30 July 2015).

[30] 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, p. 443, n. 21).

[31] 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; see also the UN Human Rights Committee, Concluding Observations on Lebanon, CCPR/C/79/Add.78, 1 April 1997.

overview, see El Machnouk 2018).[32] In particular, some recognized Others have questioned their marginalization within the political system. In 2011, for example, the Orthodox community issued a communiqué "protesting [against] its marginalization within the Christian community [...] and seeking to reclaim a more fair and balanced Christian representation".[33]

Finally, the confessional affiliation of each Lebanese citizen is registered in official documents. As a consequence, the religious identity of every candidate is known in advance of elections. A Sunni, for example, cannot run for a seat reserved for a Shi'ite, and vice versa.[34] In addition, "polling booths or *al-aklam* are typically separated in polling stations by voters' registration numbers and sectarian affiliations, a system that allows political parties to indirectly monitor and track voters' voting records".[35] This said, the Lebanese electoral system is a majoritarian bloc-vote first-past-the-post system and citizens are free to vote for any candidate who runs for a seat in a given electoral district. So voters of a majority confessional group can strongly influence the election of the representative of a minority group. In Beirut, for example, all seats are determined by a majority of Sunni voters.[36] It is no surprise, then, that some Christians complain that "most of their members were elected to office through Muslim—not Christian—votes" (Arsenian Ekmekji 2012, p. 7; El Machnouk 2018).

3.5 Northern Ireland

The Belfast (or Good Friday) Agreement of 1998, amended by the St Andrews Agreement in 2006 and by the Stormont House Agreement in 2014, consistently follows the consociational model of democracy (see, e. g., Kerr 2005, Chap. 4; McGarry and O'Leary 2004, 2009; Wilson 2012).[37] It is based on the principle of equality between the two main segments of Northern Ireland's society: the unionists (predominantly Protestants) and the nationalists (predominantly Catholics).[38] Nonetheless, one article of the Agreement explicitly mentions Others: at the first session of the Northern Ireland Assembly, its members must register a "designation of identity", as unionists, nationalists or "other".[39]

[32] See Arsenian Ekmekji (2012).

[33] Ibid., p. 8.

[34] Source: Samir Makdisi, American University of Beirut (personal communication via email, 29 July 2015).

[35] Salamey (2014, p. 111).

[36] Ibid., p. 113.

[37] The 1998 agreement also contained elements of the centripetal approach—the "concurrent majority election rule" used for electing the dual premiership—but these were abandoned in the 2006 agreement (McGarry and O'Leary 2017, p. 79).

[38] Note that these are *de jure* political—not religious or ethnic—identities (McGarry and O'Leary 2009, p. 71), though they are clearly connected to the two historical confessions in Northern Ireland (Taylor 2006).

[39] 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.".

The current Northern Ireland Assembly, the sixth after the Belfast Agreement, was elected on 2 March 2017. The official report of the first session, held on 13 March 2017, shows that the very first activity of the Assembly members was indeed to sign the "Roll of Membership" designating their identity.[40] In 2017, out of 90 members, there were 40 unionists, 39 nationalists and 11 Others. The Others designated themselves as follows: eight under the label "United Community", one "European", one "Feminist" and one "Socialist". In spite of a slight increase since the 1998 election, the total share of Others in the current Assembly (12.2%) indicates that they are still a small minority in politics.[41]

Yet these figures stand in stark contrast with opinion polls showing that since 2006 there has been a consistent *plurality* of respondents from Northern Ireland declaring themselves to be *neither* nationalists nor unionists (Dixon 2011, p. 103; Wilson 2012, p. 184). In 2014, 40% of respondents opted for the category "neither", against 32% of unionists and 25% of nationalists (2% of respondents answered "don't know/other"). The share of Others is significantly higher among younger generations (varying from 45 to 55% in the age group 18–44). Unsurprisingly, a majority of Protestants identify as unionists (69%) and a majority of Catholics identify as nationalists (54%), whereas a majority of respondents with no religion identify as Others (60%).[42]

The self-identification of Assembly members seems to be closely linked to their party affiliations and ideological positions. In 2017, all Others were affiliated with the Alliance Party (eight members), the Green Party (two members) and the Party Before Profit Alliance (one member). These parties are critical of the corporate elements of the consociational system. The Alliance Party, for example, states that it "opposes the designation system [in the Assembly], as it believes it institutionalises division".[43]

What is immediately evident is that—unlike voters in Brussels or Lebanon—citizens of Northern Ireland do not have to designate their identity at polling stations. They vote on a common roll, for whichever candidates or parties they prefer (McGarry and O'Leary 2009, p. 71). This is a more liberal feature of the Belfast Agreement (later confirmed in the St Andrews Agreement). The corporate elements of the consociational model emerge only in the post-electoral rules within the Northern Ireland Assembly. Apart from the obligatory identity designation by Assembly members, the Belfast Agreement required concurrent nationalist and unionist majorities, as well as a majority in the Assembly as a whole, for the election of the First Minister and the Deputy First Minister. This rule—probably the only "centripetal"

[40] Northern Ireland Assembly, Official Report (Hansard), 13 March 2017, available from http://data.niassembly.gov.uk/HansardXml/plenary-13-03-2017.pdf (accessed 6 July 2017).

[41] Until the 2016 election the Assembly had 108 members. There were eight Others in 1998, seven in 2003, eight in 2007, nine in 2011, and twelve in 2016. The figures for the 1998, 2003 and 2007 elections stem from McGarry and O'Leary (2009, p. 34). The figures for the 2011 and 2016 elections are available at http://www.niassembly.gov.uk.

[42] ARK Northern Ireland, available from http://www.ark.ac.uk/nilt/2014/Political_Attitudes/UNINATID.html (accessed 21 May 2016).

[43] Northern Ireland Assembly Education Service, available from http://education.niassembly.gov.uk/post_16/snapshots_of_devolution/gfa/designation (accessed 21 May 2016).

element in the system (McGarry and O'Leary 2017, p. 79)—was modified in the St Andrews Agreement, so that the First Minister is nominated by the "largest political party of the largest political designation" (Art. 16A, 4), whereas his deputy is nominated by the largest party of the "second largest political designation" (Art. 16A, 5). In theory, this does not prevent politicians self-designated as Others to accede to the highest positions in the executive. Considering the electoral results since 1998, however, this is unlikely to happen in the near future.

Moreover, even after the St Andrews Agreement political discrimination against Others has persisted in the Assembly. Most notably, the passage of "key decisions" (Art. I.5.d Belfast Agreement) requires either parallel consent (a concurrent majority of both nationalists and unionists, as well as a majority in the Assembly) or a weighted majority (60% of votes in the Assembly and at least 40% support from both nationalists and unionists).

The designation of identity in the Assembly, introduced for the purposes of consensual decision-making, is not free of controversy. On the one hand, as already noted, such rules "discriminate against [the Others] and may create a minor incentive for people to vote nationalist or unionist, as their votes would count more" (McGarry and O'Leary 2009, p. 34). On the other hand, critics have asserted that reducing political life to only two monolithic political (*de facto* ethno-religious) identities distorts the political picture of Northern Ireland, making it *a priori* impossible for parties not linked to either of the two groups to exert any significant influence in Parliament (Gilbert 1998; O'Flynn 2003; Taylor 2006). Notice also that, under the Belfast Agreement, in the course of a legislative term members of the Assembly had the right to change their initial designation of identity. Thus, members of the Assembly who had opted for the category of Others later chose to re-register as unionists or nationalists (McCrudden 2004, p. 218). The St Andrews Agreement, however, modified this practice so that "members of the Assembly can no longer change their designation … during an assembly term, except when changing party membership" (Wolff 2009, p. 112).

3.6 South Tyrol

In the Italian province of South Tyrol there are three pre-determined ethno-linguistic groups: Germans (69.4%, in 2011), Italians (26.1%) and Ladins (4.5%). The ethnic proportional quota system ensures that "all public jobs are distributed according to the proportional strength of the given linguistic groups, as determined by the most recent popular census" (Pallaver 2014, pp. 381–382).

From a citizen's point of view, fulfilling the declaration of ethnicity is a prerequisite to exercising the right to access political functions and public services. Until 2005 the identification of citizens was done every ten years through an ethnic census. This system was used for the first time in 1981, and again in 1991 and 2001. The information on ethno-linguistic affiliation was not made anonymous for subsequent statistical purposes but was included in a register accessible to state authorities. Accordingly, if person X wanted to stand for election for a certain office (for example, to become a member of the provincial Assembly or of a municipal council), she was automatically included in the quota for her ethno-linguistic group. Citizens who did

not wish to declare their ethnicity were banned from running for office. It is worth noting that if citizen Y, for instance, declared that he did not belong to the Italian group, for the following ten years (i. e. until the next population census) he could not run for any political office reserved for the German speakers or for the Ladins. The system was thus quite rigid, its sole flexibility being citizens' rights to declare themselves differently at the next population census.

Since the 1991 census citizens have been able to declare themselves as Others. However, if an Other wishes to run for office she *must* "affiliate" with one the three ethnic groups. This step is considered as a "declaration of aggregation" rather than a "declaration of belonging" to an identity group (Lantschner and Poggeschi 2008, p. 228). According to Francesco Palermo, this reform did not change much 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 against Bosnia.[44] For Stefan Graziadei, in contrast, the South Tyrolian system—precisely because it allows citizens to declare either *belonging* to, or simply *affiliation* with, one of the three groups—"does a fair job in matching individual choice and societal interests of group equality" and could even be applied to Bosnia "without requiring a fundamental overhaul of the current system" (Graziadei 2016, p. 79).

A new rule, adopted in 2005 (Decreto legislativo 99/2005), separates (a) the declaration given in the census and (b) the personal declaration of belonging or of aggregation. The former is anonymized and is used for statistical purposes only, in order to determine the numerical weight of the three linguistic groups (Carlà 2013, p. 9). The latter is optional and is used by citizens who intend to benefit from ethnic quotas. Once submitted, the personal declaration enters into force after 18 months. After a period of five years it can modified anytime, but the new declaration comes into effect only two years later.

In any event, not a single application from South Tyrol has yet been lodged with the ECtHR over potential discrimination against Others with regard to the enjoyment of political rights (Graziadei 2016, p. 79). Nevertheless, in 1999, the *Corte di cassazione* (the highest tribunal in Italy) affirmed in the *Beltramba* case that a person's non-declaration of ethno-linguistic identity cannot result in the denial of the right to stand for election. In other words, the situation in South Tyrol is illegal.[45] The judgment in this case, however, was issued by a court whose decisions only have an *inter partes* and not *erga omnes* effect; this means that the principle contained in the ruling cannot be generally implemented (i. e. imposed) in practice, although the judgment itself is highly significant in terms of of legal argumentation.

3.7 Overview of the six cases

As we have seen, the six cases differ in many respects with regard to Others. For a comprehensive overview (Table 2) it is useful to distinguish between the following criteria:

[44] Source: Francesco Palermo, Professor of Constitutional Law, University of Verona (personal communication via email, 3 August 2010).

[45] Judgment No. 11048 of 24 February 1999.

Table 2 The Others in six consociational systems: an overview

	Belgium	Bosnia and Herzegovina	Burundi	Lebanon	Northern Ireland	South Tyrol
Official main consociational segments	Dutch speakers, French speakers	Bosniaks, Croats, Serbs	Hutus, Tutsis	Maronites, Sunnis, Shi'ites	Unionists, Nationalists	Germans, Italians, Ladins
Voters must identify themselves ethnically	No (national elections); Yes, via party choice (Brussels)	No	No	Yes	No	Partially (qua citizens, via nominal census, rather than qua voters)
Candidates must affiliate themselves with a main segment before/after election	Yes, *after* election (national level) and *before* election (Brussels)	Yes, *before* election	Yes, *before* election	Yes, *before* election	Yes, *after* election	Yes, *before* election
Who are the Others?	A. German speakers; B. All other	A. 17 national minorities B. Bosnians C. Ethnic objectors	A. Twa B. Ganwa C. Arabs D. Father unknown	A. Minority Christians and minority Muslims B. All other	A. Ethnic objectors	A. Ethnic objectors
Quotas for Others	Yes (German speakers in the Senate); No (other Others)	No (state level[a]); Yes (municipal level)	Yes (Twa); No (other Others)	No	No	No
Passage from Others to official segment	De jure easy; de facto rather difficult (linguistic competence required)	De jure easy (no check); de facto difficult (social control)	De jure possible; de facto difficult (social control)	De jure very difficult	De jure possible; de facto difficult (social control)	De jure possible (every 7 years and/or via a "declaration of affiliation"); de facto rather difficult (linguistic competence; social control)

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

a. Must *voters* identify themselves ethnically?
b. Must *candidates* identify themselves ethnically (either before or after elections)?
c. *Who* are the Others?
d. Are there any *quotas* or *reserved seats* explicitly designed for the political representation of Others?
e. Is it easy or difficult (both *de jure* and *de facto*) for citizens belonging to Others to *join* one of the significant segments of the consociational regime?

Table 2 shows that corporate consociations can be more or less inimical towards the political participation of Others. In particular, in Belgium (at the national level) and in Northern Ireland candidates can designate their ethnic group *after* elections. In Bosnia, Jewish or Roma citizens cannot, as such, run for the Presidency or the second chamber of Parliament. In Lebanon and South Tyrol citizens cannot run for elections if they refuse to declare their ethnicity. On the other hand, with the exception of Lebanon, most consociational settlements analysed in this article are rather liberal as far as the voters' identifications are concerned. Some reserve seats for certain sub-groups of Others (Belgium, Bosnia, Burundi) but not for other Others. Also, generally speaking, we should observe that it is *de jure* easy for an Other to join a significant consociational segment, but social control or insufficient linguistic skills (e. g. in Belgium and South Tyrol) make this choice *de facto* difficult.

4 Conclusion

The group of Others is a statistically marginal and rather heterogeneous group in each of the six "corporate" consociational settlements analysed in the present article. Nonetheless, as the example of Bosnia and Herzegovina emblematically illustrates, the main issue at stake is not statistical in nature. It bears repeating that *even if* the Others in a society are a statistically insignificant and heterogeneous category, their exclusion from consociational institutions raises important *normative and legal* issues for liberal democracies (see Graziadei 2016). As we have seen, the equality of citizens is a paramount principle in democratic theory, and contemporary standards of human and citizens' rights and liberties prohibit discrimination based on ethnic belonging. Individual rights have higher standing than group rights. Again, the example of Bosnia is telling. After two landmark decisions of the ECtHR (*Sejdić and Finci vs. Bosnia and Herzegovina*, and *Zornić vs. Bosnia and Herzegovina*) the authorities of Bosnia and Herzegovina have faced pressure from the international community to undertake reforms of their political institutions in order to eliminate every form of discrimination against Others (Merdzanovic 2015).

On the other hand, we must keep in mind that consociational settlements have been arrived at out of concern for peace and democratic stability (see O'Flynn 2010). The main goal of consociational theory is to guarantee power sharing, autonomy, proportional representation and veto rights to the *significant* segments that comprise the society (McGarry and O'Leary 2009; O'Leary 2005, p. 12). It has, therefore, provided in a number of cases for the inclusion of minority segments (e. g., Catholics in Northern Ireland, Germans in South Tyrol), ending decades of marginalization.

This is an important achievement that cannot be overlooked; but neither should we overlook the reality that the consociational approach is *ipso facto* uninterested in the political status of citizens who do not belong to any of the significant segments. After all, the goal of consociationalists is not to build *any* kind of political regime but a *democratic* regime. Thus, consociational democracies must find ways to ensure the political equality of Others.

In the end, the tension between the defence of core democratic principles and concerns for the peace and stability of democratic settlements in divided societies remains. If forced to choose between the two horns of the dilemma, consociationalists generally privilege peace and stability.[46] To that end, they are willing to sacrifice the political rights of a statistically small group of citizens whose political accommodation is not necessary for maintaining peace and stability. They favour political and "pragmatic" solutions as a matter of contingent judgement and are highly suspicious of national or international tribunals that, as a matter of principle, tend to protect individual rights over group rights (McCrudden and O'Leary 2013). After all, as Anne Phillips (1995, p. 15) notes, in consociations "the emphasis is less on what is just and more on what is necessary".

One way to solve the dilemma would be to opt for liberal instead of corporate strategies for implementation of consociational settlements or, in Lijphart's words (2008) for "self-determination" instead of "pre-determination" of groups. By focusing on corporate consociations, in this article I have deliberately chosen to analyse the *hard* cases. Whether corporate consociations will become more liberal is difficult to say. Clearly, though, further research is needed to ascertain how well (or badly) Others fare in "liberal" consociations[47]—and, for that matter, to what extent marginalized groups are included in the institutions of (non-consociational) liberal democracies (e. g., Muslims in France or Latinos in the United States).

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[46] "We fear that any deepening of the trend of judicial scepticism of consociations will be deeply unfortunate in another critical respect, because it will leave future diplomats, delegates and peace negotiators in other places riven by bloody ethnic conflicts with considerably less flexibility in reaching either a transitional or durable political settlement, and may therefore unintentionally contribute to prolonging such conflicts" (McCrudden and O'Leary 2013, pp. 147–148).

[47] Among contemporary consociations, McCulloch (2014, p. 507) argues that Afghanistan (since 2004), Iraq (the 2005 Constitution) and Malaysia (since 1971) follow the liberal logic.

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