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Veto power and power-sharing: insights from Burundi (2000–2018)

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ABSTRACT

Veto power is a key institutional pillar of consociational power-sharing. However, the literature is divided on its impact for institutional functionality. While the founding father of consociational theory, Arend Lijphart, expects veto rights to be exercised sparingly by segmental elites, more recent scholarship emphasizes the need for restrictions (in terms of veto players, veto issues, veto points and procedure) in order to avoid abusive and disruptive veto practice. Burundi's transition from ethnic conflict to ethnic pacification was strongly based on the use of military and political power-sharing, including consociationalism. This article examines the design of veto rights and their practice in Burundi over the past two decades. The analysis confirms that the institutional design of veto power matters, but it counters the hypothesis that a too enabling veto design induces the abuse of veto rights and disrupts consociational functionality. The Burundi case-study shows that the impact and "shelf-life" of veto rights are best understood by taking into consideration the intersection of veto power with other power-sharing institutions and practices, both formal and informal.

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Introduction

On 21 October 1993, Burundi's attempted democratization came to an abrupt end with the assassination of President Melchior Ndadaye, the first member of the Hutu community to occupy this top post. The president was assassinated on the heels of political reforms that were meant to transition from long-standing one-party rule towards democracy but which also served to alter the long-standing balance of power between Burundi's Hutu, a demographic majority at roughly 85% but long politically marginalized and Tutsi, a demographic minority at 14% but a political dominant community. Those responsible for Ndadaye's murder came from the ranks of the military, an institution at this point overwhelming Tutsi in composition. Sullivan characterizes this event as evidence of a Tutsi military veto intended to stop the redistribution of political, economic and military power away from the Tutsi community toward the Hutu.¹

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This extreme use of non-institutional but highly effective veto power had devastating consequences. Ndadaye's assassination unleashed a decade of ethno-political violence and civil war, which only ended with the signing of the Arusha Peace and Reconciliation Agreement (APRA) in August 2000, later add-on peace agreements, and a new constitution adopted by referendum in 2005. Political and military power-sharing – both
50 between ethnic segments and between incumbents and armed rebel movements – has been a cornerstone of the negotiated peace. Several authors and policy-makers refer to Burundi as the most successful case of ethnic pacification through consociational engineering on the African continent.²

As a form of governance which combines institutions of shared and self-rule between
55 divided ethnic communities, consociationalism entails the adoption of four political institutions: executive power-sharing (e.g. grand coalitions), segmental autonomy, proportionality and veto rights.³ In Burundi, while there are no provisions on segmental autonomy, there are ethnic quotas in both legislative houses, on a 6:4 basis Hutu to
60 Tutsi in the National Assembly and parity representation in the Senate, a presidential grand coalition where the president is supported by two vice-presidents, one Hutu and one Tutsi from different political parties, and a list-PR electoral system. There is also power-sharing in the security sector: the minister of defence cannot be from the same ethnic group as the minister responsible for the national police and both the mili-
65 tary and the national police force are to achieve parity representation between the two communities in their ranks. While this new arrangement revoked the Tutsi military veto, it enabled legislative veto powers for both communities. Under the terms of the 2005 constitution, qualified majority rules exist in both chambers where decisions are taken by a two-thirds majority vote of those present and voting. The combination of
70 ethnic quotas and qualified majority rules was meant to enable both Hutu and Tutsi representatives to block new legislation. In this article, we have a dual objective: we aim to offer an empirical study of the design and functioning of veto power in Burundi between 2000 and 2018 and to shed light on the implications of this trajectory for consociational theory.

Veto rights are an integral component of consociational democracy. Seen as the
75 “ultimate weapon” minorities have in order to protect their vital interests,⁴ vetoes work in conjunction with executive power-sharing and proportionality to ensure the equitable representation and participation of minorities. While these latter institutions are considered necessary for minorities to gain access to decision-making channels, they
80 are not failsafe. As illustrated by the guaranteed representation of the small Twa segment in the Burundian legislature (see below), simple majority rules in such venues may mean that minorities may still lack the numerical strength to protect their interests. The veto, then, is akin to an insurance policy for the protection of a minority's vital interests.

Writing ten years on from the first post-conflict elections in 2005, Ram and Strøm
85 refer to Burundi as a success story, arguing that the adoption of a mutual veto regime under the 2005 Constitution significantly reduced the scope of political violence and lessened civil conflict.⁵ While this claim has merit, it is nonetheless worth further scrutinizing the success of the Burundian veto rights regime. First, veto rights in general and
90 their specific manifestation and effect in Burundi remain underexplored. Indeed, very little has been written on how the veto operates in Burundi, the issues on which it is deployed, and how any disputes stemming from veto use are resolved. Here we consider the motivations, institutional design, and practice of veto rights in Burundi between

2000 and 2018. Recent political developments and the adoption of a new constitution in June 2018 have profoundly eroded the veto regime. We thus also consider the consequences of this erosion of veto power for the future of power-sharing in the country.

95 Second, despite its characterization as a leading case of consociationalism in Africa,⁶ the practice of power-sharing in Burundi has not always conformed to expectations on consociational functionality. Raffoul labels Burundi as a “deviant case” for consociational theory, suggesting that it is an “associational” type of power-sharing fundamentally oriented towards the depoliticization of ethnicity.⁷ We consider whether Burundi upholds or contradicts consociational theorizing on veto use. While early consociational theory assumed political actors would use their veto power sparingly,⁸ contemporary consociational practice challenges this assumption, which has led later theorists to argue for further institutional constraints on veto use, including restrictions on which issues can be vetoed, higher thresholds for veto use and justificatory rules for its deployment.⁹ The puzzle of veto rules in Burundi is that while none of these additional restrictions apply, veto power has not been fully deployed. We highlight design features unique to the Burundian veto regime that help to explain this turn of events. In assessing the trajectory of veto power in Burundi between the adoption of its consociational constitution in 2005 (along the basis of provisions agreed in the 2000 peace accord) and its replacement with a decidedly less-consociational version in 2018, our intention is not to provide a full overview of Burundian politics during this period but instead to focus in on veto practices. While veto power is not the only (or indeed the most dominant) variable in Burundi’s recent political evolution, veto practices in the country do offer important insights for how consociational theory understands veto power.

115 **Consociationalism, veto rights, and functionality**

120 Consociationalism is a form of power-sharing premised on elite cooperation and designed to ensure the participation and representation of both majorities and minorities in government in deeply divided societies. In cases of violent conflict, it is also used to facilitate joint decision-making between former combatants. The design of consociational institutions, including veto power, is informed by two different logics of representation. One, corporate consociation, predetermines the groups that are to share power and the other, liberal consociation, permits groups to self-determine the terms of their participation.¹⁰ While much of the scholarly literature displays a preference for liberal consociation, political actors, particularly from minority communities, prefer corporate provisions. In Burundi, the liberal design of veto power has enabled the use of the veto not *along* ethnic lines but by the political opposition *across* the ethnic divide. The main political cleavage in contemporary Burundi has become a matter of party politics, not of ethnicity. This suggests that a liberal (rather than corporate) veto logic may reduce – rather than enhance, as often expressed by critics of consociationalism – the salience of ethnicity.

135 Consociationalism is the subject of a long scholarly debate. It has been criticized for failing to ensure political stability, for the difficulty with which it is adopted, and for its purported un-fairness for those not expressly included in the power-sharing arrangement.¹¹ Much scrutiny, however, is focused on what we might term its functionality, which considers how consociational institutions work, whether they work as intended, and whether they facilitate elite cooperation. The central critique of consociational

functionality is its alleged tendency for immobilism. As it compels parties to situate themselves as the most “robust defender of the cause”¹², consociationalism may encourage parties to take more extreme positions in their bid to retain this title. According to Roeder and Rothchild, power-sharing arrangements produce a game of political brinkmanship as parties attempt to extract concessions from the other side.¹³ Horowitz expresses a similar perspective: “Where robust guarantees, including minority vetoes, are adopted, immobilism is a strong possibility, and it may be very difficult to overcome the stasis that immobilism can produce”.¹⁴

This concern with immobilism is particularly salient when we consider the veto. A veto implies the ability to reject proposed legislation or policy even in the absence of a majority. The purpose of a veto in a consociation is to ensure that ethnic minorities have the “capacity to control issues important to them and prevent decisions favoured by other groups that may threaten their fundamental interests”.¹⁵ In this sense, the veto is meant to reassure minorities that the majority will not pass any legislation harmful to their vital interests. Minorities are motivated to try and gain veto rights as part of a negotiated peace settlement where they have some bargaining power. Majorities, meanwhile, may accept minority vetoes and other concessions in order to ward off a worst-case scenario for all, but they may also be constrained into acceptance in situations of momentary weakness, where their bargaining power is weakened.¹⁶ Thus, while veto rights may be a necessary component to a negotiated power-sharing settlement, they inherently risk immobilism.

While there is a general consensus that veto use should be a policy of last resort, scholars differ as to whether it is used this way in practice. Lijphart argues that vetoes will be used with caution and can have a moderating influence.¹⁷ He suggests that minorities will avoid excessive veto enactment, mindful that such rules can also be turned against their own interests; that the veto’s availability as a “potential weapon” provides a sense of security strong enough to make its use unlikely; and that all groups will use the veto with restraint, cognizant that too-frequent use can lead to deadlock and immobilism. The expectation is that veto power works best when used sparingly and judiciously. Not all scholars agree that those with veto power will use it with restraint. Bieber suggests that, of the four consociational institutions, vetoes can have “the most serious negative repercussions” and argues that Lijphart underestimates the veto’s risk of immobilism.¹⁸ McEvoy, in recognizing the importance of veto rights in getting to a power-sharing deal in the first place, warns that “the specific veto procedures make a difference in fostering cooperation among elites” and thus favours institutional constraints on veto power.¹⁹

How veto rights are designed will greatly affect functionality. That is, they can be designed with constraining features that support judicious veto use or they can be designed expansively with enabling features that risk veto abuse. Designed in myriad ways, at least five different components of veto power are pertinent. First, it matters who has veto rights (*i.e.* is it a minority veto only available to one group or is it a mutual veto available to several different players? Are the players predetermined along ethnic lines?). Second, it matters where in the legislative process the veto can be triggered and how many veto points there are in the process. Third, it matters whether the veto can be deployed passively (*i.e.* by simply voting against a measure or not showing up to the vote, in the case of quorum rules) or whether they need to take an active step of deploying some prior mechanism in order to start the veto process (*i.e.* a group must first signify their intention to use their veto power before

they can exercise it).²⁰ Fourth, it matters whether the veto can be permitted on any legislative proposal or whether it is restricted to only specific constitutionally-delineated issues. Finally, it matters whether there is an adjudication process in place for when a veto is deployed and whether the relevant veto player has to provide justification for veto use (i.e. are they required to justify their veto use in terms of their vital interests?).

Each of these components can either constrain or enable the temptation to invoke veto power. Restricting the issues on which a veto is permitted will, de facto, decrease the opportunity for veto use whereas a permissive approach that allows parties to veto any proposal will increase the number of such opportunities. Having justificatory rules, where parties are required to explain how the proposal impedes their vital interests, can be expected to constrain veto use whereas the absence of such rules will lower the bar to veto enactment. McEvoy outlines several design suggestions for what she calls a “less-is-more” approach: too many veto points may “cripple the system”, and should thus be limited to one legislative chamber; the number of issues-areas to which vetoes apply should be restricted (she specifically mentions budget, culture, language, and symbols), and, where possible, the players should be able to self-identify, rather than be predetermined. Doing so, it is anticipated, will facilitate the veto’s conflict-minimizing potential and lessen its immobilism potential.

Two final points are worth noting, both of which will be illustrated through the empirical record of veto power in Burundi. First, veto rights do not exist in a vacuum, but are part of an interlocking set of institutions designed for accommodation. How veto power is wielded is contingent on the functionality of other power-sharing rules and, more broadly, of the rules governing elections, political parties and the *trias politica*. Second, informal practices not explicitly outlined in constitutional documents, such as behind-closed-doors negotiations and other forms of dispute resolution, and, a fortiori, practices circumventing or violating constitutional norms, may also inform the real-life functioning of formal institutional veto rules. Indeed, it is worth noting here that Burundi’s post-colonial history was essentially marked by a zero-sum game approach between the two main ethnic groups rather than by a political culture of inter-ethnic compromise. A history of compromise may help explain why veto power is sparingly used in other long-standing consociations, but it is of only limited explanatory value in Burundi.

Veto power in Burundi

Twenty years on from the Burundi peace talks in Arusha Tanzania, time has come to draw lessons from the use of power-sharing – and, in particular, veto use – in Burundi’s negotiated transition from armed conflict. This section analyzes the motivations of negotiating parties and peace mediators and how the veto rules were adopted, the institutional design of veto rules, their use in the 2005–18 period and, finally, the effectiveness and sustainability of veto power.

Adoption

Vetoes exude a “make it or break it” quality; parties are reluctant to sign onto a deal unless they are granted veto power but the use of that power may threaten the sustainability of the power-sharing agreement over the long-run. The adoption of the veto

rules during the Arusha peace talks highlight the “make it” part. Both Hutu and Tutsi parties saw it in their best interests to negotiate their own veto power and to try to limit such power for the other side. In May 2000, a key advisor to lead mediator Nelson Mandela summarized the remaining obstacles to an effective peace agreement, noting that both Hutu and Tutsi parties to the negotiations

are trying to ensure that a negotiated agreement will deny the other side the amount of power needed to ‘misbehave’. [...] They seem to believe that they will only be able to prevent the other side from misbehaving if they themselves have ‘enough’ power, i.e. more power than the other side.²¹

For the Hutu parties, the demand was that the peace process must remove the military Tutsi veto power that allowed the (demographic) minority to blow up Burundi’s democratization process in October 1993. As such, their one essential request was the creation of a truly national army to replace the Tutsi dominated “ethnic militia”, as Leonard Nyangoma called Burundi’s armed forces.²² For the Tutsi parties, however, reforming the army without alternative guarantees for minority protection amounted to surrendering the Tutsi minority to those elements among the Hutu that, they feared, wanted to exterminate them.²³ In their view, democratizing Burundi was impossible without buffers to protect the minority against the weight of the demographic majority in the elected institutions. The 1994 genocide in neighbouring Rwanda further enhanced that deep-seated distrust, heightening the urgency for strong guarantees that the parties could protect their vital interests.

These requests resonated with Mandela’s take on the Burundi conflict as a situation similar to apartheid rule in South Africa.²⁴ A compromise was found: Hutu parties obtained the end of Tutsi military veto power through the establishment of a power-sharing army and police composed of 50% Hutu and 50% Tutsi. Tutsi parties obtained a consociational rather than purely majoritarian constitutional dispensation, with detailed power-sharing arrangements, including ethnic quotas in the legislature and in the executive branch. Even though Tutsi parties appended major reservations to their signature of the APRA – mainly because they wanted to negotiate additional guarantees for their substantive representation during the constitutional drafting process – their signature of the APRA reflects Lijphart’s view that “the very fact that the veto is available as a potential weapon gives a feeling of security”.²⁵ For the leaders of both segments, this mutual politico-military veto was an incentive to leave the military battlefield for the political arena with assurances that their fundamental interests would be protected.

However, the above-mentioned asymmetric motivations of signatory parties behind the veto compromise remain an important key to understand the recent evolution (marked by “erosion”, see below) of veto power in Burundi. In line with Horowitz’s argument that the consociational adoption is possible only if and as long as the demographic majority group faces a temporary weakness,²⁶ one might expect the Hutu majority – even more so in the absence of sustained international Mandela-style pressure²⁷ – to question the Tutsi minority veto power once their weakness has been overcome. Indeed, this came to pass.

Institutional design

Our analysis of the institutional design of veto power is based on the Constitution of 18 March 2005, a blueprint of which was included in the APRA. While the use of other

consociational mechanisms (grand coalition and proportionality) is engineered with a high degree of sophistication, the Constitution did not elaborate in any detail the essentially indirect²⁸ veto power. In short, there are no explicit limitations in terms of veto players, points or issues; neither is there an adjudication process nor a justificatory clause for veto use.

Veto players

The 2005 Constitution explicitly singles out three ethnic groups for predetermined representation: Hutu, Tutsi and Twa.²⁹ Both Hutu and Tutsi can be considered as veto players as both had veto power on the basis of their guaranteed representation in the legislature and the executive branch in combination with the qualified majority (or consensus) requirements for the adoption of decisions. The Twa (or Batwa), traditionally hunters and potters of pygmy origin and estimated to represent no more than 1% of Burundians, have guaranteed representation in the National Assembly and the Senate (but nowhere else), with three co-opted members in both chambers in parliament.³⁰ Absent from the negotiating table in Arusha, they have no veto power, even when it comes to legislation that affects the vital interests of this extremely poor societal segment. This illustrates the fact that descriptive representation may provide access to decision-making channels but does not suffice to protect the interests of the represented segment.

While Burundi's consociational set-up is notably corporate, given the predetermined composition of the legislative assemblies and the executive, its veto power arrangement is liberal. Hutu legislators may decide to support their Tutsi colleagues if they think the protection of minority interests warrants the use of veto against a proposed decision. In fact, as practice has shown, Tutsi office-holders concerned about minority representation or protection can strategically join forces with Hutu office-holders who seek to block a decision for political reasons. This flexibility is obviously also related to the permissive nature of veto power in Burundi.

Still, although Burundi has a mutual veto system, it is primarily perceived as a minority veto benefitting the Tutsi, because under a non-consociational democratic system Hutu representatives – who are likely to garner most Hutu votes in a post-ethnic war situation – would also be able to block decisions in the absence of any special veto arrangement.

Veto points

Legislatively, the composition of both chambers of parliament must respect predetermined constitutional quotas. In the National Assembly, 60% of MPs are Hutu (an estimated 85% of the population) and 40% are Tutsi (an estimated 14% of the population).³¹ Where the results of the elections are not in accordance with these quotas, additional members can be (and, in practice, have been) co-opted into the legislature. There are 50% Hutu and 50% Tutsi senators, indirectly elected on ethnically separate lists of candidates.

At the level of the executive, the 2005 Constitution provided for a "soft" consociational presidency, with one directly elected president (likely to be Hutu) and two vice-presidents of different ethnic origin and different political parties, one from a predominantly Tutsi and the other from a predominantly Hutu party. Appointed by the elected president – upon approval of parliament – and having an advisory and coordinating role, they have no veto power. The government is composed of 60% Hutu

cabinet ministers and 40% Tutsi cabinet ministers. The 2005 Constitution stipulated that the Council of Ministers decides by consensus. While the Constitution did not specify how consensus should be achieved, the APRA explicitly referred to the need for the government to reflect ethnic, religious, political and gender balance in its decisions and appointments.

Veto issues

Under the 2005 Constitution, there was a two-thirds quorum requirement as well as a two-thirds majority-voting requirement for the adoption of legislation, resolutions or other decisions in both legislative chambers. For some matters, a three-quarter (appointment of the electoral commission and the ombudsperson) or four-fifths (constitutional amendments) voting requirement applied. As a result of these combined ethnic quotas and qualified majority requirements, both Hutu and Tutsi parliamentarians – assuming they cast their votes as representatives of two opposing ethnic identity groups – could therefore block decisions in all policy areas (not just those related to vital interests). In the executive, the rules of procedure of the Council of Ministers required a two-thirds quorum for all deliberations, irrespective of the issues discussed. This represents a permissive rule, allowing the veto players to determine the issues on which the veto can be used.

Justification and adjudication

There is no legal requirement for parties or individual office-holders to justify their vote (or their boycott of the session) or to explain how the proposed legislation is detrimental to their vital interests. The rules are also “absolute”³² in that there is no procedure for adjudication on the issues subject to veto use (like, for instance, the “alarm bell procedure” in Belgium). Once deployed, the veto effectively ends the legislative process on that particular issue: according to its rules of procedure, bills rejected by the National Assembly cannot be reintroduced for a period of twelve months.

Veto practice

The Burundi veto regime eschews a less-is-more perspective and on the basis of the components highlighted above, has what we call a most-enabling veto regime. By all accounts, the too-frequent use of veto power should be a distinctive feature of power-sharing in Burundi. Yet, the veto regime belies this expectation. Despite its potentially far-reaching consequences for political decision-making, it did not produce any major institutional stalemates. Since 2005, no vote in parliament has been opposed by *all* Hutu or *all* Tutsi MPs or senators collectively voting in favour or against a proposed decision along ethnic lines. Neither has there been any parliamentary meeting boycotted by *all* Tutsi members and attended by *all* Hutu members (or vice versa). In other words, veto power was never pushed to full application, at least according to the consociational expectation that ethnic actors use their veto power to protect their group’s vital interests. We explain this surprising turn of events on the basis of three main reasons.

Nature of ethnic divisions: Although Burundi has a permissive veto, some of the policy areas most frequently seen as vital interests and affected by veto power in other consociations – language, religion, culture, education, territorial configuration of the state – are in reality almost immune from veto practice in Burundi. This is

365 due to the specific nature of ethnicity in Burundi, which also explains the absence of
segmental autonomy. While it would go beyond the scope of this paper to develop
this further, it is important to note that Burundi was a pre-colonial nation state
kingdom, where Hutu, Tutsi and Twa were labels of socio-economic stratification
and specialization, rather than of rigid ethnic categories demarcated along the lines
of language, religion, skin colour or territorial concentration. These labels became a
370 source of ethnic antagonism as a result of political instrumentalization, discrimination
and violence, initially during the colonial era (until 1962), then under the Tutsi-domi-
nated UPRONA (Union for National Progress) single party republic, and, finally,
during the civil war after the October 1993 collapse of democratization. In short, the
contemporary salience of ethnicity is largely due to how ethnic identity was constructed
through decades of exclusion and violence.

375 Given this historical background, it is not surprising that the issues opposing Hutu
and Tutsi politicians after 2000 – and thus most salient for the exercise of veto power –
related to the legacy of the past and to the sustainability of the (highly consociational)
ethnic pacification mechanism itself. These include: the restitution of land to (mainly
Hutu) returnees and the functioning of the National Land Commission; truth and
accountability for human rights violations committed during the one-party republic
and the civil war; the situation of (mainly Tutsi) IDP camps; electoral legislation and
380 election management; security sector issues; constitutional reforms and, more recently,
the use of ethnic quota in areas where the peace agreements did not provide for their
application, such as the local staff of foreign non-governmental organizations.

385 *Informal processes of consultation:* In the early period after the 2005 elections, infor-
mal consultation was used to find a compromise satisfying all sides. This was, first of all,
the continuation of the spirit and practice of the “government of national unity”-model
put in place during the period of transition (i.e. after the signature of the peace agree-
ments but prior to the 2005 elections). In addition to this path-dependent factor, there is
a second more interest-based dimension. The aftermath of the 2005 elections was
390 characterized by a wave of appointments of officials in the state apparatus and of
newly established commercial enterprises and non-governmental organizations, benefi-
tting both old and new elites. This post-conflict cake-sharing (or *amagaburanyama*,
“meat-sharing” in Kirundi) was fuelled by additional donor support and smoothed
the functioning of Burundi’s consociation in a spirit of mutual accommodation. Con-
versely, aid sanctions imposed after the 2015 crisis reduced the size of the cake and the
395 elites’ willingness to share it.

400 *Intersection with intra-party ethnic cohabitation:* While Burundi’s consociation is
typically classified as corporate, it does have rules that deviate from the corporate arche-
type. In addition to the liberal rules on veto players, a key centripetal rule requires all
political parties to present multi-ethnic lists at the National Assembly elections: only
two out of every three candidates on a (blocked) list can belong to the same ethnic
group. The aim was to force parties to recruit candidates and votes from the “other”
side of the ethnic divide and to encourage inter-ethnic socialization among party
cadres, thus promoting national unity. However, this also meant that Tutsi MPs –
most of whom were in 2010 and 2015 elected on the CNDD-FDD (former Hutu
405 rebel movement) list – could not use their veto power without going against party
orders. Since 2009, moreover, party dissidents have been severely sanctioned with the
loss of their parliamentary seat, a huge cost effectively discouraging the use of veto
power. Because of this third factor, a classical explanation for the absence of restrained

veto practice – namely that the mere threat of veto use suffices to prevent the adoption of legislation that may warrant its actual use³³ – does not hold in the case of Burundi.

While the veto rules did not result in voting strictly along ethnic lines, this does not mean that they had no effect. Instead, on a limited number of occasions, Tutsi opposition parliamentarians strategically joined forces with Hutu colleagues who were – for a variety of reasons – also opposed to a proposal, jointly blocking a decision across ethnic lines. One year before the 2010 general elections, President Nkurunziza convened an extraordinary session of parliament to approve his nominees for the electoral commission (CENI), several of whom were closely connected to his party, CNDD-FDD. Opposition parliamentarians boycotted the National Assembly session (which failed to reach quorum) and voted against in the Senate (which did not reach the required three-quarter majority). After a month of consultations with the opposition, a new team was approved and the CENI legislation was revised in February 2009.³⁴ The second example concerns the proposed constitutional amendment tabled in parliament in November 2013. Aimed at removing some of the Constitution’s consociational features – such as the two-thirds majority requirement for the voting of legislation – and at circumventing the presidential term limit³⁵, the bill failed to obtain the required four-fifths majority in the National Assembly. Rather than shoring up the ability of ethnic minorities to protect their vital interests as anticipated by consociational theory, the veto rules in Burundi re-directed at least some veto power to political parties. The rules on ethnic co-habitation within parties and the liberal rules on veto players meant that the veto would not necessarily function as an ethnic veto per se, but could instead be used by an alliance of opposition parties against the ruling party.

Effectiveness and sustainability

As explained above, veto power was one pillar of the political and military power-sharing arrangement that was supposed to put an end to Burundi’s cycles of ethno-political violence. Almost two decades after the signature of the APRA, this raises questions about whether that goal has been achieved and about the durability of veto power.

Ethnic pacification

There is a general consensus among academic authors and policy-makers that – at least from a short-term perspective – post-conflict Burundi has been a successful case of ethnic pacification on the basis of consociational engineering. After 2005, Burundi did not experience inter-ethnic civil strife. And, while attempts to democratize have failed,³⁶ one major achievement remains that political competition no longer coincides with ethnic rivalry.³⁷ The two major post-2005 episodes of institutional instability were due to leadership struggles within the dominant party CNDD-FDD, not to the “old” Hutu-Tutsi divide. They are nevertheless relevant for our analysis because the way in which these intra-CNDD-FDD power struggles were resolved seriously affected the future of veto power.

In February 2007, CNDD-FDD chair Hussein Radjabu was deposed by a special party congress at the initiative of President Nkurunziza, both Hutu and close fellow strongmen at the time of the rebellion. Radjabu was arrested and his supporters were removed from key government positions. Parliamentary work, however, continued to be blocked by twenty-two MPs from the Radjabu wing, who joined forces with the opposition. In June 2008, the Constitutional Court stripped the Radjabu supporters

of their seats, leading to their replacement by MPs loyal to Nkurunziza.³⁸ In 2009, the electoral code was revised to ensure that parliamentarians who do not follow party orders lose their mandate. Indeed, Tutsi MPs within CNDD-FDD were left with no other option but to toe the party line, increasingly determined by a group of exclusively Hutu generals.³⁹ This contributed to the erosion of veto power (see below).

The second episode relates to the third-term ambitions of President Nkurunziza in the run-up to the 2015 elections. In 2014, CNDD-FDD split in two camps, one siding with Nkurunziza, the other (including both Hutu and Tutsi) opposing his third term. After his nomination at a party congress in April 2015, which was “legalised” by a controversial Constitutional Court ruling on 3 May 2015,⁴⁰ popular protests culminated in an attempted coup d’état on 13 May 2015. The Nkurunziza regime survived the coup and restored control over the party and the state. A central part of its political discourse since then has been to blame Rwanda (led by President Kagame, a Tutsi) for stirring attempted regime change in Burundi, a narrative that resonates well with the Hutu masses who vividly remember the Tutsi army-led assassination of Hutu president Ndadaye in 1993.⁴¹ Beyond the obvious risk of re-ethnicizing political discourse in Burundi, a second more immediate consequence for Burundi’s consociation was that Nkurunziza’s “survival” and subsequent re-election allowed him to initiate constitutional reforms that further eroded veto power.

Erosion

Veto power in Burundi is not immune to the increasingly authoritarian environment – fundamentally shaped, according to one well-informed insider, by the failed transformation of the CNDD-FDD from rebel movement to political party⁴² – in which it is situated. As we demonstrate, it has been the subject of a gradual process of erosion. First, we connect veto power to the issue of substantive (versus descriptive) representation of the Tutsi minority. Secondly, both the political and security power-sharing institutions have been supplanted by increasingly influential quasi-formal institutions outside the reach of institutional veto power. Thirdly, the new Constitution of 7 June 2018 constituted a shift from *de facto* to *de iure* erosion.

Who should represent the Tutsi minority and defend its interests? And how to avoid, at the same time, exacerbating the ethnic divide? These were two crucial questions during the talks on the constitutional blueprint in Arusha in 2000 and, four years later, during the constitution-drafting process. The crucial above-mentioned choice to add a centripetal element to Burundi’s electoral system by requiring multi-ethnic party lists at the National Assembly elections was not supported by consensus. Most Tutsi parties claimed that Tutsi interests can only be defended by Tutsi parties, not by so-called Tutsi “*imperekeza*” politicians (“followers”) who allegedly blindly follow (Hutu) party orders and only descriptively represent Tutsi. This explains why several Tutsi parties campaigned against the 2005 Constitution bill, which they considered deficient in terms of minority protection (including the minority veto).⁴³ In addition, the increasingly dominant position of CNDD-FDD in the political landscape and its sanctioning of intra-party dissidents further eroded minority veto power. From the very start of the transition period, the Tutsi voice was far from unified, with new parties like MSD (Movement for Solidarity and Democracy) competing for Tutsi votes against UPRONA. Also, like other opposition parties, UPRONA was split as a result of the government orchestrated process of “*nyakurisation*”: the splitting of opposition parties through a hostile take-over by a dissident but legally recognized pro-

government wing. In summary, the Tutsi minority did not make use of its veto power partly because of an institutional design feature, which disconnects the Tutsi electorate from Tutsi politicians who, in addition, are internally divided.

The second type of veto erosion illustrates the broader risk of non-consensual pathways from “sticky” power-sharing systems.⁴⁴ The APRA and constitution regulated ethnic power-sharing and veto power within Burundi’s state institutions. A worrisome trend, however, particularly since the 2010 elections, has been the creeping displacement of power towards quasi-formal institutions outside the ambit of constitutional norms. In the security sphere, the power-sharing army has so far remained more or less unified and, even at the time of the May 2015 coup attempt, did not fall apart along ethnic lines. However, rather than being the most powerful player at the domestic level – as used to be the case under the UPRONA republic – it has mainly become a peace-keeping army active in interventions abroad like AMISOM.⁴⁵ When it comes to internal security, Burundi’s defense force has been largely side-lined and supplanted by other institutions. These are the national intelligence service (directly controlled by the president’s office, not subject to any parliamentary control and since June 2018 no longer affected by constitutional ethnic quotas) and the *Imbonerakure*, the CNDD-FDD youth wing which has become the main institution in charge of law and order.⁴⁶ In the political sphere, important decisions are taken neither in parliament nor by the government, but by the “regime”, i.e. a group of (exclusively Hutu) generals who control both party and state.⁴⁷ In short, this second type of veto erosion also stands witness to the circumventing of APRA-based power-sharing, undermining the consociational experience as a whole.

The next stage formalized and accelerated the process of erosion, without completely annulling, but still restricting, minority veto power. After a carefully orchestrated referendum, organized at the sole initiative of CNDD-FDD, a new Constitution was promulgated on 7 June 2018. The (unconstitutional) *replacement* of the 2005 Constitution – rather than its *amendment* in parliament via a four-fifths majority in the National Assembly (which CNDD-FDD did not have) and a two-thirds majority in the Senate – constituted in itself a major blow to the very idea of a minority veto. Redesigning Burundi’s institutional architecture through a simple majority decision by popular referendum rendered all carefully negotiated APRA provisions on minority protection precarious. Though beyond the scope of this paper to analyze the constitutional reform in full, the major changes as they relate to veto power are:

- (i) quotas are maintained in parliament, government and security forces (except the national intelligence service), but the adoption of legislation – for which the two-thirds quorum requirement is maintained – now requires a simple majority vote (except organic laws, for which a three-fifths majority is required in both chambers);
- (ii) The new Constitution removes the previous stipulation that parties obtaining 5% of the votes were entitled to a cabinet position in the coalition government, which was a provision tailor-made for small Tutsi parties;
- (iii) Replacing the “soft” consociational vice-presidency, the new Constitution creates the office of a prime minister, who can be of the same ethnic group and political party as the president, while maintaining a merely ceremonial and powerless vice-president of another ethnic group than the president;

(iv) A soft sunset clause is introduced. Within five years, the Senate (composed of 50% Hutu and 50% Tutsi members and 3 Twa senators) must evaluate whether ethnic quotas should be maintained. Although an evaluation recommending the end of ethnic quotas will require constitutional reform, the 2018 experience shows that the qualified majority requirements for a constitutional amendment – which are maintained in the new Constitution – can be easily circumvented via referendum.

In summary, the new Constitution largely reduces minority veto power to some (likely temporary) position-sharing, offering a number of seats to Tutsi politicians at the mercy of a Hutu-dominated party leadership.

Conclusion: what consociationalism can learn from Burundi

What lessons does Burundi's veto regime offer for consociationalism? Specifically, where does its experience fall in terms of the two different perspectives on vetoes explicated in the consociational literature: Lijphart's early contention that veto players will use their power sparingly and judiciously or the argument of later scholars who claim veto power is too easily abused unless restrictive rules are enacted?⁴⁸ Burundi's veto regime, which we label as a "most-enabling" design, offers evidence that both confirms and contradicts aspects of these perspectives and consequently makes it an important case for the study of consociational functionality.

First, contra expectations on most-enabling rules, which assume that the veto will be used indiscriminately, veto power in Burundi has not been deployed to excess. Vetoes have not created legislative deadlock nor has any vote been opposed strictly along ethnic lines. Thus, this limited use reflects Lijphart's belief that vetoes will be used sparingly but not for the reasons he anticipates. Lijphart's contention was that ethnic leaders, mindful of the damage that excessive vetoes could wreak, would be predisposed to handle their veto power with care.⁴⁹ This assumption is not borne out in the Burundian case, where this kind of "spirit of accommodation" eroded over time. Limited veto use in Burundi can instead be explained by a complex configuration of formal and informal constraints facing ethnic and party-based veto players. Likewise, the adage proffered by later scholars that a "less is more" approach is needed in order to reign in veto excess is not fully reflected in Burundi. Under a "less is more" approach, the issues subject to veto are limited to those deemed to be of vital interest to the communities, such as "identity issues, symbols, language, culture, education, the budget, and security".⁵⁰ Yet the particularities of how ethnicity is manifested in Burundi do not conform to the kinds of interests typically marked out as vital in other divided societies. Moreover, the experience in Burundi suggests that a permissive and enabling veto system does not automatically impede consociational functionality. Consequently, general conclusions on the impact of design on veto practice (like "less is more") are hard to draw without taking into account the specific circumstances of the situation.

Second, since it can be difficult to "disentangle the causal effect" of a single institution,⁵¹ it is important to also situate the veto regime's performance in its larger institutional setting. The trajectory of veto power cannot be separated from other formal institutional provisions for conflict management, with these other rules bearing on the incentives and constraints of the veto rules. In Burundi, the veto's enabling features were constrained by the liberal nature by which veto players were identified and by the centripetal rules on party formation. While the party formation (ethnic cohabitation)

rules have helped to defuse and reconfigure ethnic tensions, it made it more difficult for the minority (now spread across a number of parties) to effectively protect their vital interests as to do would necessitate a break with party ranks. This may have depoliticized ethnicity but it still left the Tutsi minority vulnerable in the event that their vital interests were threatened.

Seldom usage, however, does not mean that vital interests are not threatened. It may mean that the rules are not strong enough for a community to protect their interests or that informal mechanisms alter their ability to do so. In Burundi, this latter phenomenon came to pass, particularly after the 2008/9 turning-point (i.e. the sanctioning of party dissidents), and thus it serves as an important counterpoint to the consociational tendency to focus on the formal rules of the game. Informal rules and institutions can either be used to support the consociational project, by invoking a “spirit of accommodation”, or they can derail the project by circumventing the agreed-upon rules. The tendency, seen early on in Burundi, to informally mediate contentious issues before they got to the stage of legislative veto enactment is in keeping with consociational theorizing about the veto as a last resort; even “cake-sharing” practices are in line with consociational expectations if they can defuse ethnic tensions. It need not only be “consociational generosity” that prompts accommodation; direct self-interest can also do so.⁵² The later shift to informal decision-making power by the “regime” (that is, the new power configuration headed up by “the club of Hutu generals” and “the *Imbonerakure*” (also Hutu), outside of power-sharing principles), however, jeopardized not only the veto regime but also the whole power-sharing project. Once the CNDD-FDD began to unilaterally seek to change the terms of the constitutional bargain, it became only logical that the Tutsi – other than the above-mentioned “*imperekeza*” co-opted by the dominant party – would see the survival of consociation as their primary vital interest.

Finally, this also suggests a lesson about elite motivations and the temporality or the “shelf-life” of consociational arrangements. Some scholars argue that consociation only works as a transitional device to stabilize relations after violent conflict but holds society back from more “normal” politics over the long-term; others emphasize consociational “biodegradability”, arguing that extended periods of cooperation will render such extraordinary measures of conflict management superfluous.⁵³ In the first scenario, consociations are predicted to collapse into renewed violence, whereas in the second scenario, consociation ends through a peaceful and orderly transition to some other democratic configuration. Burundi offers important insights on the pathways from power-sharing, in that its consociational project is marked by neither abrupt collapse nor by consensual biodegradability. Instead it is marked by gradual – and undemocratic – erosion, in large part because the CNDD-FDD is no longer motivated to keep the consociational bargain alive.⁵⁴ The party was able to chip away at the initial agreement, to circumvent the extant rules when it was in its interest to do so, and even unilaterally change those rules with the adoption of a new constitution that limits veto power. This kind of erosion is especially relevant in situations where veto arrangements did not emerge out of self-grown democratic practice (i.e. the cases studied by Lijphart), but where they were introduced by parties facing a mutually hurting stalemate and under strong international “peace mediation” pressure. Erosion is also likely where the size differential between groups is substantial. A majority may be constrained into accepting minority vetoes during negotiations but it may be more difficult to maintain support for them over the long term. When parties no longer see it in their interest

to abide by the power-sharing rules because they can now govern alone, the constraining effect of their temporary weakness at the moment of adoption lapses. While Tutsi parties were able to negotiate a political veto at Arusha, it came at the expense of their military veto power. For the Hutu parties talking peace in Arusha, the constitutional entrenchment of the institutional minority veto was a bargaining chip to obtain the end of the military minority veto. Yet once that military minority veto was annulled – when an ethnically balanced power-sharing army was established and, more recently, when the security sector was increasingly usurped by CNDD-FDD party structures – there was little incentive for the Hutu in office to accept a continuation of Tutsi political veto power. This suggests that, in order to explain the trajectory of veto power in Burundi between 2000 and 2018, we need to account not only for the specific design of formal veto rules and the larger (formal and informal) institutional setting in which they operate, but also for elite motivations and willingness to continue to play by the established rules of the game.

Notes

1. Sullivan, “The Missing Pillars,” 88.
2. See, i.e. Reyntjens, “Burundi: Institutionalizing Ethnicity,” 27–50; Wolpe, *Making Peace after Genocide*, 70.
3. Lijphart, *Democracy in Plural Societies*, 25.
4. Lijphart, “The Power-Sharing Approach,” 491–509.
5. Ram and Ström, “Mutual Veto,” 344.
6. Lemarchand, “Consociationalism and Power Sharing,” 12.
7. Raffoul, “The Politics of Association,” 8.
8. Lijphart, *Democracy in Plural Societies*, 37.
9. McEvoy, “We Forbid!,” 253–277.
10. McGarry and O’Leary, “Iraq’s Constitution,” 670–698.
11. Horowitz, “Ethnic Power Sharing” 8–10; Stojanović, “Political Marginalization of ‘Others,’” 343.
12. Mitchell, “Extremist Outbidding,” 403.
13. Roeder and Rothchild, “Power Sharing as Impediment,” 9.
14. Horowitz, “Ethnic Power Sharing,” 7.
15. McEvoy, “We Forbid,” 263.
16. Lijphart, *Democracy in Plural Societies*; Horowitz, “Ethnic Power Sharing”.
17. Lijphart, *Democracy in Plural Societies*, 37.
18. Bieber, “Power-Sharing After Yugoslavia,” 95.
19. McEvoy, “We Forbid,” 255.
20. McCulloch, “The Use and Abuse of Veto Rights,” 736.
21. Van Eck, *Burundi Report*, 6.
22. Nyangoma was one of the leading figures of Melchior Ndadaye’s FRODEBU party. After Ndadaye’s assassination, he established the CNDD (National Council for the Defence of Democracy), the predominantly Hutu rebel movement of which the main break-away faction, the CNDD-FDD, was led by current President Pierre Nkurunziza from 2001 onwards.
23. Buyoya, *Mission Possible*, 135.
24. International Crisis Group, *The Mandela Effect*, 27.
25. Lijphart, *Democracy in Plural Societies*, 37.
26. Horowitz, “Ethnic Power Sharing,” 8.
27. Vandeginste, “Power-sharing in Burundi,” 175.
28. Schneckener, “Making Power-Sharing Work,” 221. To define indirect veto power, Schneckener refers to specific conditions that have to be met for legislation to pass in parliament (which is the case in Burundi), such as the principle of double majority (not required in Burundi).
29. Burundians who identify themselves as Ganwa, Waswahili or non-ethnic citizens (including naturalized Burundians) can only run for elected office as Hutu, Tutsi or Twa candidates. Ganwa (descendants of the monarch) mostly run as Tutsi. Ethnicity is normally determined

by patrilineal descent, although there are some (rare) exceptions. For instance, the First Vice-President after the 2015 elections, Gaston Sindimwo, has a Congolese father and Burundian Tutsi mother and is therefore considered Tutsi.

30. Vandeginste, "Political Representation of Minorities," 7.
31. These estimated demographic proportions, not based on any post-colonial census, are generally used both in academic literature and in policy documents. They were also used during the Arusha peace talks, with some Hutu parties denouncing the proposed over-representation of the Tutsi minority.
32. Lijphart, *Thinking About Democracy*, 67.
33. Lijphart, *Democracy in Plural Societies*, 37.
34. International Crisis Group, *Burundi: Ensuring Credible Elections*, 3.
35. Vandeginste, "Legal Loopholes," 43.
36. Curtis, "The International Peacebuilding Paradox," 72.
37. Raffoul, "The Politics of Association," 11.
38. Vandeginste, *Stones Left Unturned*, 398–401.
39. Rufyikiri, "The Post-wartime Trajectory," 235.
40. Vandeginste, "Legal Loopholes," 52.
41. Présidence de la République du Burundi, *Mémemorandum*.
42. Rufyikiri, "The Post-wartime Trajectory," 220–48.
43. Separate Hutu and Tutsi nomination processes, in combination with a 50/50% Hutu-Tutsi quota system and other more consociational instruments is also what the predominantly Tutsi MORENA party (in exile) proposed as the solution for the 2015 crisis. MORENA, *Manifeste*, 8.
44. McCulloch, "Pathways from Power-sharing," 422.
45. Wilen et al., "Sending Peacekeepers Abroad," 308.
46. Human Rights Watch, *We Will Beat You*, 16.
47. Rufyikiri, "The Post-wartime Trajectory," 235.
48. McEvoy, "We Forbid," 255; Kelleher, "Minority Veto Rights," 1; Bieber, "Power-Sharing After Yugoslavia," 95.
49. Lijphart, *Thinking About Democracy*, 37.
50. McEvoy, "We Forbid," 272.
51. Ram and Strom, "Mutual Veto," 348.
52. O'Leary, "Debating Consociational Politics," 20–2.
53. Sisk, "Power-Sharing in Civil War," 110 Lijphart, *Democracy in Plural Societies*, 227; McCulloch, "Pathways from Power-sharing," 420.
54. Vandeginste, *Exit Arusha?*, 6.

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