

## **Power-sharing Executives in Northern Ireland and South Tyrol: Theories, Structures, Practices and Political Stability\***

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\* L'articolo è stato sottoposto, in conformità al regolamento della Rivista, a *double-blind peer review*.

### 1. Introduction

Northern Ireland and South Tyrol are deeply divided places, where not only ethnic, but also religious and national cleavages play a crucial role in politics.<sup>1</sup> They are border regions, where these divisions were and sometimes remain conflictual, with episodes of political violence of various intensity. Nevertheless, they are two models of conflict resolution, non-destruction of enemy but accommodation of differences, covenant for the sharing of power. The key features of these agreements are embodied in an institutional settlement, where principles of inclusion and division of groups are reified in complex designs, analysed by literature through two ideal-types: consociational democracy, of which Northern Ireland represents nowadays a famous experiment, and autonomy as internal self-determination, for the case of South Tyrol. But the two ideal-types mentioned are useful to understand both these situations. Indeed, the history of these regions can be described as the adversarial relationship between different ethno-national identities in a common territory where constructing a local government and relations between the host state and the kin one out of the border.<sup>2</sup> Why a comparison between them? Because they clearly portray the virtues and the problematics of the union between power-sharing and autonomy, analysed through a focus on the life of executives. In the autonomous South Tyrol,<sup>3</sup> the principle of

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<sup>1</sup> Populations in Northern Ireland and South Tyrol are, respectively and approximately, composed by 40% Catholic and Northern Irish and 60% Protestant and British people, and 70% German-, 26% Italian- and 4% Ladin-speaking groups. For the purposes of this article, I will analyze only sporadically the nature of the cleavages in these contexts.

<sup>2</sup> R. Toniatti, *L'evoluzione statutaria dell'autonomia speciale nell'Alto Adige/Südtirol: dalle garanzie della democrazia consociativa alla 'autodeterminazione territoriale'*, in J. Marko, S. Ortino and F. Palermo (eds), *L'ordinamento speciale della Provincia Autonoma di Bolzano*, Padova, 2001, p. 33-88, at p. 34.

<sup>3</sup> As it will be clear in the following paragraphs, South Tyrol is the geographical name of the Autonomous Province of Bolzano/Bozen, one of the two autonomous provinces (with Trento) of the Region of Trentino – Alto Adige/Südtirol, with a proper special (asymmetrical and consociational) statute. Related to this point, Wolff defined South Tyrol a 'nested consociation' in the broader context of the region, see S. Wolff, *Complex Power-sharing as Conflict Resolution: South Tyrol in Comparative Perspective*, in J. Woelk, F. Palermo, J.

executive power-sharing, with minimal but clear recommendations, satisfies the demand of protecting the Italian group. At the same time, minority guarantees are inseparable from the relevant level of autonomy, requested and gradually obtained by the German majority. Several factors, but mainly the stability of the constitutional norm, made South Tyrol an efficient example of conflict resolution. In Northern Ireland, by contrast, a strong legal settlement of consociational guarantees was not followed by a greater institutionalization of autonomy, and the self-government seems to remain linked to the parliamentary sovereignty doctrine. This situation alters government life, giving to the unionist majority a sort of veto power on power-sharing, that has contributed to the instability of the region today. Finally, the main aim of this research is to analyse the interaction of autonomy and executive power-sharing in regional contexts explaining a complex system not “as a mere sum of its components, but as something characterized by an added value which is the product of all the interactions among them”.<sup>4</sup>

## *2. The thin heart of power-sharing theories: sharing the executive power*

### *2.1. From the faced theories of power-sharing and autonomy to complex regional consociations*

Before climbing down into the analysis of the two cases, I will briefly contextualize this work clarifying the concepts of power-sharing, autonomy, complex regional consociations and federacy.

Since 1960s, the previously dominant consensus in social sciences, which prescribed the impossibility to reach democratic

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Marko, *Tolerance Through Law: Self-Governance and Group Rights in South Tyrol*, Leiden, 2008, p. 407-450.

<sup>4</sup> G. Martinico, *Asymmetry and Complex Adaptive (Legal) Systems: the Case of the European Union*, in *Maastricht Journal of European and Comparative Law*, vol. 21, 2014, p. 281-299.

stability in deeply divided places,<sup>5</sup> was demolished by empirical analyses that showed how compromises among *élites* could allow the formation of stable democracies.<sup>6</sup> Some years later, Lijphart introduced a more accurate definition of ‘consociational democracy’, characterized by four main principles: power-sharing within the executive (in a formal or informal manner, a grand coalition or a collective presidency), proportionality (in the electoral system, public service and funds allocation), autonomy (first referred to the cultural field and later extended) and veto rights for minority protection.<sup>7</sup> Afterwards, consociational theory went on to introduce other specific properties. Firstly, according to Lijphart,<sup>8</sup> power-sharing between groups can be pre- or self-determinate, or even corporative or liberal, as reported by McGarry and O’Leary.<sup>9</sup> The difference lies in the fact that there could be fixed and *a priori* specified safeguards for a certain group (corporative or pre-determinate), or more neutral mechanisms implemented to preserve people’s choice to self-identify and individual’s freedom to vote (liberal or self-determination consociation).<sup>10</sup> Afterwards, when the debate focussed on institutional

<sup>5</sup> A. Rabushka and K. Shepsle, *Politics in Plural Societies: a Theory of Democratic Instability*, Columbus (Ohio), 1972 (2<sup>nd</sup> ed.2009); cf. G. Almond, *Comparative Political Systems*, in *Journal of Politics*, vol. 18, 1956, p. 392-405.

<sup>6</sup> A. Lijphart, *Consociational Democracy*, in *World Politics*, vol. 21, 1969, p. 207-225; cf. K. McRae (ed), *Consociational Democracy. Political Accommodation in Segmented Societies*, Toronto, 1974.

<sup>7</sup> A. Lijphart, *Democracy in Plural Societies: a Comparative Exploration*, New Haven, 1977, p. 25-52.

<sup>8</sup> A. Lijphart, *Self-determination versus Pre-determination of Ethnic Minorities in Power-sharing Systems*, in id., *Thinking about Democracy*, London, 2008, at p. 71.

<sup>9</sup> J. McGarry and B. O’Leary, *The Northern Ireland Conflict. Consociational Engagements*, London, 2004; id., *Power Shared after the Deaths of Thousands and Under Friendly and Less-friendly Fire*, in R. Taylor (ed), *Consociational Theory: McGarry and O’Leary and the Northern Ireland Conflict*, London, 2009, p. 15-84 and 333-338.

<sup>10</sup> Although there is consent in literature on the preferability of liberal mechanisms (A. Lijphart, *Self-determination*, cit., at p. 74 and J. McGarry and B. O’Leary, *The Northern*, cit., at p. 36), corporate or mixed rules prevail in practice, easier to accept in negotiations, according to the empirical work of A. McCulloch, *Consociational Settlements in Deeply Divided Societies: the Liberal-Corporative Distinction*, in *Democratization*, vol. 21, 2014, p. 501-518.

design or constitutional engineering for plural societies,<sup>11</sup> another theory was born in opposition to consociationalism. Horowitz's<sup>12</sup> and Reilly's<sup>13</sup> incentives approach (also known as centripetal power-sharing), criticizing the consociational frame based on the crystallisation of groups,<sup>14</sup> proposed three solutions for a stable democracy: electoral incentives for politicians appealing also outside their group (vote pooling), multi-ethnic arenas of bargaining and centrist, moderate, aggregating parties.<sup>15</sup> Even though they suggest different institutions<sup>16</sup> and conditions of implementation,<sup>17</sup> consociationalism and centripetalism 'share' the idea that some

<sup>11</sup> G. Sartori, *Ingegneria costituzionale comparata*, Bologna, 1995; A. Reynolds (ed), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, Oxford University Press, Oxford, 2002.

<sup>12</sup> D. L. Horowitz, *Ethnic Groups in Conflict*, University of California Press, Berkeley, 1985; id., 'Making Moderation Pay': *The Comparative Politics of Ethnic Conflict Management* in J. Montville and H. Binnendijk (eds), *Conflicts and Peace-making in Multi-ethnic Societies*, Lexington, 1990, p. 454-475; id., *The Northern Ireland Agreement: Clear, Consociational, and Risky*, in J. McGarry (ed), *Northern Ireland and the Divided World: the Northern Ireland Conflict and the Good Friday Agreement in Comparative Perspective*, Oxford, 2001, p. 89-108.

<sup>13</sup> B. Reilly, *Democracy in Divided Societies. Electoral Engineering for Conflict Management*, Cambridge, 2001; id., *Political Engineering and Party Politics in Conflict-Prone Societies*, in *Democratization*, vol. 13, 2006; id., *Centripetalism: cooperation, accommodation and integration*, in S. Wolff and C. Yakinthou (eds), *Conflict Management in Divided Societies: Theories and Practice*, London, 2012, p. 57-65.

<sup>14</sup> R. Taylor, *Northern Ireland: Consociation or Social Transformation?*, in J. McGarry, *Northern Ireland and the Divided*, cit., p. 36-52, at p. 42; D. L. Horowitz, *Foreword*, in I. O'Flynn and D. Russel, *Power-sharing: New Challenges for Divided Societies*, London, 2005, p. vii-x.

<sup>15</sup> B. Reilly, *Democracy in Divided Societies*, cit., at p. 11; B. Reilly, *Political Engineering*, cit., at p. 58.

<sup>16</sup> S. Wolff, *Situating Complex Power-sharing in the Conflict Settlement Literature*, working paper, <http://stefanwolff.com/research/situating-complex-power-sharing-in-the-conflict-settlement-literature/>, accessed: December 2017.

<sup>17</sup> A. McCulloch, *Does Moderation Pay? Centripetalism in Deeply Divided Society*, in *Ethnopolitics*, vol. 12, 2013, p. 111-132; id., *The Track Record of Centripetalism in Deeply Divided Places*, in J. McEvoy, and B. O'Leary (eds), *Power-sharing in Deeply Divided Places*, Philadelphia, 2013, p. 94-111.

accommodation between groups is indispensable.<sup>18</sup> Indeed, we can talk about a comprehensive theory of power-sharing overarching the two schools of thought,<sup>19</sup> where power-sharing is defined as “any set of arrangements that prevent one agent, or organized collective agency, from being the ‘winner who hold all critical power’, whether temporarily or permanently”.<sup>20</sup>

Ethnic conflict, with its both collective and exclusive identities, undermines the individualistic roots of sovereignty and equality between sovereign states.<sup>21</sup> To overcome these pressures usually condensed in a single part of the territory, some authors stressed the importance of autonomy, as a means of power diffusion that could accommodate diversities.<sup>22</sup> Consequently, autonomy can be established as self-government in some specific territorial areas or,

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<sup>18</sup> For a definition of accommodation: J. McGarry, B. O’Leary and R. Simeon, *Integration or Accommodation? The Enduring Debate in Conflict Regulation* in S. Choudhry (ed), *Constitutional Design for Divided Societies: Integration or Accommodation*, Oxford, 2008, p. 41-88, see the first chapter of this book for a short reconstruction of the Lijphart-Horowitz debate; J. McGarry, B. O’Leary, *Territorial Pluralism: Taxonomizing Its Forms, Virtues, and Flaws*, in K. Basta, J. McGarry and R. Simeon (eds), *Territorial Pluralism: Managing Differences in Multinational States*, Vancouver, 2015, p. 497-519; J. McGarry and B. O’Leary, *The Politics of Ethnic Conflict Regulations*, London, 1993; cf. B. O’Leary, *Power-sharing in Deeply Divided Places: an Advocate’s Introduction and An Advocate’s Conclusion*, in J. McEvoy and B. O’Leary, *Power-sharing*, cit., p. 1-67 and 386-422.

<sup>19</sup> T. Sisk, *Power-sharing and International Mediation in Ethnic Conflicts*, New York, 1996; C. Kettley, *Power-sharing and Ethnic Conflict: The Consociational-Integrative Dichotomy and Beyond*, in *European Yearbook of Minority Issues*, 1, 2001, p. 247-267; A. McCulloch, *Power-sharing and Political Stability in Deeply Divided Societies*, London, 2014.

<sup>20</sup> B. O’Leary, *An Advocate*, cit., at p. 3. But in some cases, ‘direct’ consociational and ‘indirect’ centripetal power-sharing can be both implemented in a sequential way, see A. McCulloch, *Mapping the Universal-Particular Dynamic: the Power-sharing Trajectory of Bosnia and Herzegovina*, Kingston, 2003.

<sup>21</sup> D. L. Horowitz, *Ethnic Groups*, cit., at p. 87; H. Hannum, *Autonomy, Sovereignty, and Self-Determination*, Philadelphia, 1990, at p. 5; T. Ghai (ed), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States*, Cambridge, 2000.

<sup>22</sup> R. Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts*, Washington, 1997, at p. 8.

more generally, in some policy arenas.<sup>23</sup> Concerning autonomy as territorial power diffusion, many scholars are convinced that sovereignty can be interpreted in a more flexible way. These scholars claim that an increasing number of states lies on an internal and external ‘federalizing process’:<sup>24</sup> in fact, when power is spread, “the central government and the regional or autonomous authorities could each be the lawful bearer of a share of sovereignty, without necessarily leading to the disappearance or dismemberment of the state”<sup>25</sup>. In other words, this ‘federalizing process’ could lead to a sort of ‘territorial pluralism’ of public authorities.<sup>26</sup> The principles of autonomy and territorial pluralism can appear in different arrangements according to the diffusion of power, but how can autonomy be distinguished from territorial pluralism? The definition that seems to better grasp the peculiarity of these arrangements underlines that powers are not only delegate, but actually ‘transferred’ from the central state to the autonomous entity.<sup>27</sup> Therefore, during the 20<sup>th</sup> century, autonomy has been implemented for the first time in the cases of Åland Islands and in South Tyrol, and then these practices spread over the world,<sup>28</sup> with the belief that self-government as resolution of ethnic conflicts could avoid extreme solutions as secession (the ‘self-determination trap’) declining the same self-

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<sup>23</sup> M. Weller and K. Nobbs (eds), *Asymmetric Autonomy and the Settlement of Ethnic Conflict*, Philadelphia, 2010, at p. 3.

<sup>24</sup> C. J. Friedrich, *Trends of Federalism in Theory and Practice*, New York, 1968; for the effect of that in practice see A. Alcock, *The Protection of Regional Cultural Minorities and the Process of European Integration: the Example of South Tyrol*, in *International Relations*, vol. 11, 1992, p. 17-36.

<sup>25</sup> R. Lapidoth, *Autonomy*, cit., at p. 48.

<sup>26</sup> K. Basta, J. McGarry and R. Simeon, *Integration or*, cit.; id., *Territorial*, cit.

<sup>27</sup> M. Weller and S. Wolff (eds), *Autonomy, Self-Governance and Conflict Resolution*, London, 2005; M. Weller, *Escaping the Self-Determination Trap*, Leiden and Boston, 2008; and S. Wolff, *Cases of Asymmetrical Territorial Autonomy*, in M. Weller and K. Nobbs, *Asymmetric Autonomy*, cit., p. 7-47, at p. 24.

<sup>28</sup> T. Benedikter, *The World’s Working Regional Autonomies: an Introduction and Comparative Analysis*, New Delhi, 2009; and Wolff, *Cases of Asymmetrical*, cit.

determination in an internal and therefore constitutionalized dimension.<sup>29</sup>

Autonomy is strictly related to the concept of asymmetry.<sup>30</sup> In fact, the former is asymmetric at its core, holding relationships with the central state that other units of the country usually do not have. Through the acknowledgment of the diversity of the members of the polity, asymmetry allows a democratic and flexible management of peculiar needs and self-government demands and sometimes makes self-determination movements more prone to compromise.<sup>31</sup> Finally, asymmetric autonomy permits the accommodation of diversities by implementing power-sharing guarantees within the autonomous entity and even establishing federal or confederal relations with the outside.<sup>32</sup>

It can be noted that all the above-mentioned approaches have a strong normative track. This can be explained by considering that a long-standing debate on the most appropriate mechanisms to solve ethnic conflicts has been characterized by a (academic, but not only) struggle between universalistic prescriptions. The latter were expected

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<sup>29</sup> M. Weller, *Escaping*, cit., at p. 78; cf. S. Mancini, *Secession and Self-Determination*, in M. Rosenfeld and A. Sajo (eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012.

<sup>30</sup> C. D. Tarlton, *Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation*, in *The Journal of Politics*, vol. 27, 1965, p. 861-874; R. L. Watts, *A Comparative Perspective on Asymmetry in Federations*, in *Asymmetry Series*, 4, Kingston, 2005; S. Wolff, *Power-sharing and the Vertical Layering of Authority: a Review of Current Practices*, in M. Weller and B. Metzger, *Settling Self-determination Disputes: Complex Power-sharing in Theory and Practice*, Philadelphia, 2008; S. Wolff, *Complex Power-sharing as Conflict Resolution*, cit.; B. O'Leary, *Thinking About Asymmetry and Symmetry in the Remaking of Iraq*, in M. Weller and K. Nobbs, *Asymmetric Autonomy*, cit., p. 183-210.

<sup>31</sup> M. Hechter, *Asymmetrical Federal Systems: Self-determination, Cultural Identity, and Political and Fiscal Decentralization*, in *Ethnopolitics*, vol. 6, 2007, p. 125-127.

<sup>32</sup> J. McGarry, *Asymmetry in Federations, Federacies and Unitary States*, in *Ethnopolitics*, vol. 6, 2007, p. 105-116; D. Conversi, *Asymmetry in Quasi-federal and Unitary States*, in *Ethnopolitics*, vol. 6, 2007, p. 121-124; K. Kössler, *Bejond Majoritarian Autonomy? Legislative and Executive Power-sharing in European Regions*, in M. Nicolini, F. Palermo and E. Milano (eds), *Law, Territory and Conflict Resolution*, Leiden, 2016, p. 39-66.

to be converted in policies without a careful consideration of the context.<sup>33</sup> Instead, more attention should be paid to ground conditions to bring out more rigorously scientific and less ideological analyses. Otherwise, these approaches risk falling into the ‘institutional oxymoron’<sup>34</sup> of not being totally implemented in practice, where institutional ‘solutions’ are more hybrid and (apparently) confused. Indeed, during the last twenty years some scholars have started to analyse the practical solutions which have been taken in different contexts, contaminating the theories of power-sharing with those on autonomy.<sup>35</sup> These researches have shown that both autonomy and power-sharing, if singularly implemented, are not enough to solve an ethno-national conflict. Thus, they started to analyse the practices of the so-called ‘complex power-sharing’.<sup>36</sup> In fact, in addition to asymmetric autonomy and consociational elements, other conflict resolution methods can be found, such as cross-border linkages and institutions for a shared management of sovereignty or perhaps a constitutionalized right to secession.<sup>37</sup> Concerning this concept, Wolff clarifies that complex power-sharing is not a Weberian ideal-type, but rather a practice that may include various combinations of different approaches, but always has a form of self-government at its core.<sup>38</sup> The anchoring to this key principle is necessary to Wolff to divide the cases he found on the base of three main elements (that are the significance of the territorial entity related to host state, the degree of heterogeneity and the compactness of groups). In this way, Wolff classifies some peculiar regional contexts.<sup>39</sup>

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<sup>33</sup> A. McCulloch, *Power-sharing*, at p. 143.

<sup>34</sup> D. L. Horowitz, *Constitutional Design: Proposal versus Process*, in Reynolds, *The Architecture*, cit., p. 12-37.

<sup>35</sup> J. McGarry, *Power-sharing Theory: Lessons from the Complex Power-sharing Project*, in M. Weller and B. Metzger, *Settling*, cit., at p. 692.

<sup>36</sup> For the most comprehensive analysis on this issue see again M. Weller and B. Metzger, *Settling*, cit.

<sup>37</sup> J. McGarry, *Power-sharing Theory*, cit., at p. 701.

<sup>38</sup> S. Wolff, *Situating*, cit.

<sup>39</sup> S. Wolff, *Complex Power-sharing as Conflict*, cit.; id., *Power-sharing and the Vertical Layering of Authority: a Review of Current Practices*, in M. Weller and B. Metzger, *Settling*, cit., p. 407-450; id., *Complex Power-sharing and the Centrality of Territorial Self-governance in Contemporary Conflict Settlements*, in *Ethnopolitics*,

I will now shift to the empirical analysis. Starting with South Tyrol, it should be noted that, with the Statute of 1972, it adopted the four principles of consociational power-sharing:<sup>40</sup> participation of all groups in government, cultural and territorial autonomy, proportionality<sup>41</sup> and veto rights<sup>42</sup> within a regional consociational and asymmetric context. In addition to this, cross-border institutions were also established.<sup>43</sup> As regards Northern Ireland, since the Agreement of 1998 it embodies one of the main examples of consociational

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vol. 8, 2009, p. 27-45; id., *Peace by Design? Towards 'Complex Power-sharing'*, in R. Taylor, *Consociational Theory*, cit., p. 110-121.

<sup>40</sup> J. Markusse, *Power-sharing and 'Consociational Democracy' in South Tyrol*, in *GeoJournal*, vol. 32, 1997, p. 77-89; S. Wolff, *Complex Power-sharing as Conflict*, cit.; G. Pallaver, *South Tyrol's Consociational Democracy: Between Political Claim and Social Reality*, in J. Woelk, F. Palermo and J. Marko, *Tolerance*, cit., p. 303-328.

<sup>41</sup> J. Markusse, *Power-sharing*, cit., at p. 81; O. Peterlini, *Forma di governo e rapporto con lo Stato*, in S. Baroncelli (ed), *Profili costituzionali del Trentino Alto Adige/Südtirol. Lezioni e materiali*, Torino, 2015, p. 55-93, at p. 80; A. Carlà, *Living Apart in the Same Room: Analysis of the Management of Linguistic Diversity in Bolzano*, in *Ethnopolitics*, vol. 6, 2007, p. 285-313, at p. 299; A. Alcock, *The Protection*, cit., at p. 32; H. Hannum, *Autonomy*, cit., at p. 438; R. Lapidoth, *Autonomy*, cit., at p. 109.

<sup>42</sup> After an initial linguistic designation, "If a bill is considered prejudicial to the equality of rights between citizens of the different linguistic groups (...) the majority of the Members of a linguistic group in the Regional Parliament or Provincial Parliament of Bolzano may request a vote by linguistic groups. If the request for separate voting is not accepted, or if the bill is approved notwithstanding the contrary vote of two-thirds of the members of (...) [that] group (...), the majority of that group may contest the law before the Constitutional Court within thirty days of its publication (...). The appeal shall not have the effect of suspending the law" (Art. 56 of the Autonomy Statute). The same provision is for the single items of the budget (cf. A. Alcock, *From Conflict to Agreement in Northern Ireland: Lesson from Europe*, 2001, in J. McGarry, *Northern Ireland*, cit., p. 159-180, at p. 174) with some 'judicial remedies', see R. Toniatti, *L'evoluzione*, cit., p. 64-69; cf. K. Kössler, *Beyond Majoritarianism*, cit.

<sup>43</sup> D. Conversi, *Asymmetry*, cit., p. 122-123; S. Wolff, *Complex Power-sharing as Conflict Resolution*, cit.; see also the concept of 'speciality within speciality' in R. Toniatti, *L'evoluzione*, cit., at p. 47; and F. Palermo, *'Bridges' in Self-determination Disputes? External Relations of Sub-National Entities and Minority Groups*, in M. Weller and B. Metzger, *Settling*, cit., at p. 667-688.

democracy,<sup>44</sup> as it has power-sharing in the executive, proportionality in the electoral system and public life,<sup>45</sup> autonomy and certain veto rights<sup>46</sup> in an asymmetric context.<sup>47</sup> In this research, I have accepted the definition of Northern Ireland and South Tyrol as ‘complex regional consociations’. Even if used since 1990s,<sup>48</sup> this expression has been later refined firstly by Wolff, and then by Woelk.<sup>49</sup> Firstly, Wolff states that in these contexts, differently from sovereign consociations, the host State can directly modify the balance between groups,<sup>50</sup> so that not only governmental power-sharing mechanisms but also cross-border linkages are indispensable.<sup>51</sup> Thus, regional consociations, halfway between integration in the State and separation, combine territorial autonomy and consociational power-sharing in an

<sup>44</sup> However, Lijphart was skeptical on the application of *his* model to Northern Ireland, see A. Lijphart, *The Northern Ireland Problem: Cases, Theories, and Solutions*, in *British Journal of Political Science*, vol. 5, 1975, p. 83-106; anyhow, the Agreement (but not the historical conditions) was not much different from the previous Sunningdale one (1973-4), as noted by S. Wolff, *Context and Content: Sunningdale and Belfast Compared*, in R. Wilford (ed), *The Belfast Agreement*, Oxford, 2001, p. 11-27.

<sup>45</sup> B. O’Leary, *The Logics of Power-sharing, Consociation and Pluralist Federations and Complex Power-sharing in and over Northern Ireland...*, in M. Weller and B. Metzger, *Settling*, cit., p. 61-124, at p. 98.

<sup>46</sup> The ‘cross-community vote’, obtainable with a ‘petition of concern’, used in all key issues by default (art. 5 of the Agreement); the ‘parallel consent’ (the majority of nationalists, unionists and that of the Assembly) and the ‘weighted majority’ (60% of the Assembly and at least 40% of nationalists and unionists). Since 2007 the petition of concern is also possible within the executive.

<sup>47</sup> Differently from Scotland and Wales, Northern Irish devolution can be extended with the consent of the Secretary of State and is protected by an international treaty with the Republic of Ireland, B. O’Leary, *Comparative Political Science and the British-Irish Agreement*, in J. McGarry, *Northern Ireland*, cit., p. 53-88, at p. 63.

<sup>48</sup> J. McGarry and B. O’Leary, *The Politics*, cit.

<sup>49</sup> S. Wolff, *Complex Autonomy Arrangements in Western Europe: a Comparative Analysis of Regional Consociationalism in Brussels, Northern Ireland and South Tyrol*, in M. Weller and S. Wolff, *Autonomy, Self-Governance*, cit., p. 117-141; J. Woelk, *La Transizione Costituzionale della Bosnia ed Erzegovina...*, Padova, 2008.

<sup>50</sup> M. Kerr, *Imposing Power-sharing: Conflict and Coexistence in Northern Ireland and Lebanon*, Portland, 2006.

<sup>51</sup> S. Wolff, *Complex Autonomy Arrangements*, cit., at p. 118.

incremental way.<sup>52</sup> *Vice versa*, in Northern Ireland and South Tyrol, peculiar demographic characteristics meant that territorial autonomy alone was not enough, and power-sharing mechanisms at the tier of the autonomous entity became necessary to solve the conflict. Comparing these two cases and Brussels-Capital Region, Woelk notes that the distinctive features of these contexts are a creative, and therefore complex combination between asymmetric distribution of competences, peculiar mechanisms of coordination with the centre and guarantees enshrined in international law mechanisms.<sup>53</sup>

Finally, in these regional consociations the federal (with the host state) or confederal (with cross-border relationships) developments are extremely important. Starting with the latter, South Tyrol and Northern Ireland have confederal linkages respectively with the Austrian land of Tyrol and the Republic of Ireland.<sup>54</sup> As regards the former, the relationship with the host state, our complex regional consociations are peculiar kinds of autonomies: federacies. This term comes from the comparative works on federalism and was originally coined in Elazar's broad study.<sup>55</sup> Subsequently, the concept was

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<sup>52</sup> H. Lerner, *Making Constitutions in Deeply Divided Societies*, Cambridge, 2011.

<sup>53</sup> J. Woelk, *La Transizione*, cit., at p. 65.

<sup>54</sup> The North-South Ministerial Council works interdependently from the Assembly; see also the British-Irish Council (of devolved governments) and the British-Irish Intergovernmental Conference, cf. B. O'Leary, *Comparative Political Science and the British-Irish Agreement*, in J. McGarry, *Northern Ireland*, cit., p. 53-88, at p. 62; id., *The Logics*, cit., at p. 105-110.

<sup>55</sup> D. J. Elazar, *Exploring Federalism*, Tuscaloosa, Alabama, 1987. Moreover, Elazar wrote about consociational theory: "consociational polities are nonterritorial federations in which polities divided into transgenerational religious, cultural, ethnic, or ideological groupings are constituted as federation of 'camps', 'sectors', or 'pillars' and jointly governed by coalitions of leaders of each" (p. 7). The relationships between theories on federalism and consociationalism derive from the common origin of these two approaches: Althusius (cf. A. Lijphart, *Consociation and Federation: Conceptual and Empirical Links*, in *Canadian Journal of Political Science*, vol. 14, 1979, p. 499-515). To generalize, we can talk about a pluralism of authority separated in a horizontal power-sharing and a vertical power-dispersion. Cf. F. Palermo and K. Kössler, *Comparative Federalism. Constitutional Arrangements and Case Law*, Oxford and Portland, 2017.

repeatedly and controversially redefined by, among others, Rezvani,<sup>56</sup> Stepan, Linz and Yadav<sup>57</sup>, Stepan<sup>58</sup> and O’Leary.<sup>59</sup> In brief, federacies are autonomous entities within a unitary or union state – but also within a regional state like Italy – where asymmetry becomes a federal relationship with the host state. Host states, owing to constitutional or international constraints, cannot unilaterally change the *status* of this part of the territory (this is the case concerning United Kingdom with Northern Ireland and Italy with South Tyrol). This relation with the centre brings the asymmetry of a ‘single’ autonomous entity to this extreme but does not provide the same status to every part of the state, which would otherwise become a federation. The federal bond in Northern Ireland even prescribes, in accordance with the ‘principle of consent’, a ‘constitutionalized right to self-determination’ for the Northern Irish people, which can hold a referendum to join the Republic of Ireland. However, it should be noted that the 1998 Agreement puts strong constrictions on this right.<sup>60</sup>

## 2.2. *The diverse modalities of executive power-sharing*

In its various (liberal or corporative) consociational or centripetal natures, power-sharing is the most crucial element in ethno-national conflict resolution within an asymmetrical autonomous entity. Indeed, to ensure that this ‘sharing’ is truly effective, it is essential that the executive is not totally won, lost, in other words taken by who comes first at the electoral competition. Putting aside the relevant analyses of electoral systems in plural societies,<sup>61</sup> the main

<sup>56</sup> A. Rezvani, *The Dynamics of Semi-Sovereign Territories*, Oxford, 2004.

<sup>57</sup> A. Stepan, J. J. Linz and Y. Yadav, *Crafting State-Nations: India and Other Multinational Democracies*, Baltimore, 2011.

<sup>58</sup> A. Stepan, *A Revised Theory of Federacy and a Case Study of Civil War Termination in Aceh, Indonesia*, 2013, in J. McEvoy and B. O’Leary, *Power-sharing*, cit., p. 233-252.

<sup>59</sup> B. O’Leary, *Power-sharing: an Advocate’s Conclusion*, cit., at p. 403.

<sup>60</sup> 1998 Agreement, Constitutional Issues, 1.v.

<sup>61</sup> In the old debate, Lijphart proposed a (closed list) proportional system, while Horowitz a majoritarian alternative vote (AV, cf. A. Lijphart, *Democracy*, cit. and D. L. Horowitz, *Ethnic Groups*, cit.). Afterwards, the AV has been shown to be

power-sharing schools acknowledge the crucial role played by whoever holds the executive power. However, they have opposite visions on who should take part in government: centripetalists expect that moderation can be best obtained with a stable and voluntary coalition of moderates, which should be agreed before the elections (thus being a ‘coalition of commitment’ rather than ‘of convenience’), and which should exclude extreme forces. Alternatively, governments could also consist in a monocratic presidency with specific preconditions. These could either be electoral requisites (such as alternative vote), or territorial ones (such as a minimum number of votes that must be obtained in all districts or regions of the country).<sup>62</sup> Consociationalists, in turn, emphasize the importance of an inclusive government,<sup>63</sup> and prefer even a grand coalition within a parliamentary system, better if formalized by mechanisms of sequential allocation of seats or a collective presidency.<sup>64</sup> To the aims of this paper, I will focus on semi-parliamentary, or rather neo-parliamentary systems in the regional contexts of Northern Ireland and South Tyrol.

However, further specifications are needed when speaking about grand coalition. Indeed, overcoming the critiques of being non-

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more dependent on demographic conditions (the dispersion and quantity of groups) and party system (an already existent degree of moderation), see B. Reilly, *Democracy*, cit.; S. Wolff, *Electoral-Systems Design and Power-sharing Regimes*, 2005, in I. O’Flynn and D. Russel (eds), *Power-sharing*, cit., p. 59-76; and B. Grofman, *Electoral rules and Ethnic Representation and Accommodation: Combining Social Choice and Electoral System Perspectives*, in J. McEvoy and B. O’Leary, *Power-sharing*, cit., p. 67-93. See also Mitchell’s analysis on single transferable vote (STV), P. Mitchell, *The Single Transferable Vote and Ethnic Conflict: Evidence from Northern Ireland*, in *Electoral Studies*, vol. 33, 2014, p. 246-257. Indeed, according to many authors, the STV, bridging proportionality and vote pooling, seems to guarantee accountability and to avoid fragmentation (B. O’Leary, *Comparative*, cit., at p. 70; id., *The Logics*, cit., at p. 88; cf. also A. Lewis, *Politics in West Africa*, London, 1965, at p. 73).

<sup>62</sup> D. L. Horowitz, *Ethnic Groups*, cit.

<sup>63</sup> Believing that inclusion would make radicals less extreme, cf. J. McGarry and B. O’Leary, *The Northern Ireland Conflict*, cit., at p. 25.

<sup>64</sup> A. Lijphart, *Democracy*, cit.; J. McGarry and B. O’Leary, *The Northern Ireland Conflict*, cit.; id. *Power-sharing Executives: Consociational and Centripetal Formulae in the Case of Northern Ireland*, in *Ethnopolitics*, vol. 15, 2015, p. 497-519.

democratic, due to an alleged lack of opposition, or an all-embracing and indeterminate concept,<sup>65</sup> O’Leary clarifies that one should not include in the definition of a ‘grand coalition’ only the cases where all parliamentary parties join the government.<sup>66</sup> On the contrary, in this expression the accent must on ‘coalition’, rather than on ‘grand’, and specifically on its jointness, understood as an agreement or pact between at least two parties belonging to different pillars of society.<sup>67</sup> Concerning the institutional mechanisms of executive formation and looking to which and how many parties form the coalition in a power-sharing executive, O’Leary distinguishes among unanimous (or complete), concurrent or weak coalitions. More in detail, a unanimous (or complete) coalition embodies Lijphart’s description of an *élites* cartel among all parties that are expression of all constitutive groups of the society. In a concurrent consociational government, instead, each ethnic block is represented in the executive with the support of at least the absolute majority of parties and, consequently, of different electorates. Finally, a weak consociational executive has only the support of the simple majority of parties and electorate from each segment of the society.

After this introductory and theoretical summary, I will analyse more in depth the executives of South Tyrol and Northern Ireland, applying the above-mentioned categories and trying to explain governmental (in)stability through the interaction between the regional executives’ rules and the nature of autonomy.

### *3. The Giunta and the President of the Autonomous Province of Bolzano/Bozen: from the implicit to the minimum winning coalition*

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<sup>65</sup> D. L. Horowitz, *The Northern Ireland Agreement*, cit.; S. Halpern, *The Disorderly Universe of Consociational Democracy*, in *West European Politics*, vol. 9, 1986, p. 181-197.

<sup>66</sup> B. O’Leary, *Debating Consociational Politics: Normative and Explanatory Arguments*, in S. Noel (ed), *From Power-sharing to Democracy: Post-conflict Institutions in Ethnically Divided Societies*, Toronto, 2005, p. 3-43.

<sup>67</sup> B. O’Leary, *Debating Consociational Politics*, cit., at p. 12: “What matters is meaningful, cross-community, joint decision making within the executive...”.

### 3.1. *The institutional architecture of a flexible compromise*

Even though it has been said that an institutional union between mechanisms of autonomy and power-sharing with a fixed constitutional norm can guarantee political stability, this did not prevent South Tyrol from changing its statute and flexibly adapting its system to social and political evolutions. This was the case with the constitutional reforms of 2001,<sup>68</sup> which reinforced the protection of the original ethnic groups in the Province. Specifically, according to article 47 of the Provincial Statute (as modified by art. 4.1 of constitutional law no. 2 of 31 January 2001), the Provincial Council can decide, with an absolute majority vote, and respecting the constitutional and international duties, the form of government of the Province,<sup>69</sup> including the system of election of the Provincial Council

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<sup>68</sup> The constitutional law no. 3 of 18 October 2001 broadened the primary, secondary and tertiary legislative competence of the Provinces (introducing a local residual clause), strengthened power-sharing mechanisms, like vote procedures and offices rotation, and incorporated the German name *Südtirol* in the constitutional law (cf. S. Wolff, *Complex Power-sharing as Conflict Resolution*, cit.). From a normative point of view, the constitutional law 3/2001 overturns the relationship between the Region and the Provinces stating, art. 116.2 (Italian Constitution), that the two provincial councils form the regional one (art. 25.1 of the Statute) and not *vice versa*. Finally, the so-called negotiating method (*metodo negoziale*) has been introduced by art. 103 (Statute): “For amendments to the present Statute the procedure laid down by the Constitution in relation to constitutional laws shall apply. The Regional Parliament shall also have the right to initiate amendments of this Statute, according to the proposals of the Parliaments of (...) Trento and Bolzano and subsequent conformable resolution of the Regional Parliament. Projects for amendments to the present Statute initiated by the government or parliament shall be communicated by the Government of the Republic to the Regional Parliament and Provincial Parliaments, who shall express their opinion within two months. Approved amendments to the Statute shall in any event be subject to a national referendum”.

<sup>69</sup> As claimed by Peterlini, the form of government of the regions with a special statute is not ruled by a proper ‘statute’ but a ‘statutory law’ (*legge statutaria*), approved by the absolute majority of the members of the Council; the two institutes (the statute and the statutory law) are not compatible, changing the terms for the appeal to the Constitutional Court (30 instead of 60 days) and for the prescription of a confirmative referendum if requested by one fiftieth of the electors or seven members of the Council or, if the law is approved by a two thirds majority,

itself, the President,<sup>70</sup> the members of the *Giunta* (the Provincial government), the relations between these components (for example, the motion of confidence), the cases of ineligibility and incompatibility and the proposal of abrogative (or advisory) *referenda* (art. 47.2).<sup>71</sup> Anyway, in case the President is elected by the Council, which was the case before the reform and stayed unchanged, the Council dissolves itself if, 90 days after the elections or resignation of the President, the Parliament has not been able to form a majority. In the case where the Council, which must be elected with a proportional system (art. 47.3),<sup>72</sup> prescribed a direct election of the President, the Provincial law had to pass with the approval of two thirds of the members of the Council. That law must also be communicated, according to the Statute (art. 55), to the Representative of the central government for the Province (*Commissario del Governo*), with the provision that the central government of Rome has 90 days to raise the constitutionality question to the Italian Constitutional Court.<sup>73</sup>

Article 50.2 of the Statute is the most relevant for the election and the selection of the members of the executive. After describing

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one fifteenth of the electors (see also Italian Constitutional Court, judgement no. 370 of 6 November 2006, *Consiglio delle Autonomie Locali*); cf. O. Peterlini, *Forma di governo*, cit., at p. 60.

<sup>70</sup> The direct election is obtainable with a two thirds majority vote of the Council (art. 47.3 Statute); indeed, Trento, without the constraint to a proportional representation for the Council, has approved the direct election of the President; cf. G. Avolio, *Gli organi statuari. Funzioni, composizione e sistema elettorale*, in J. Marko, S. Ortino and F. Palermo, *L'ordinamento*, cit., p. 398-424, at p. 424.

<sup>71</sup> The limits settled by the legislator for the contents of the statutory law are the harmony with the Constitution, the principle of the republican legal order (absent for ordinary regions), respect for international duties and the statutory law itself (art. 47.2). Cf. O. Peterlini, *Forma di governo*, cit., at p. 61).

<sup>72</sup> Proportional representation is declined in a preferential system with some norms in favour of the Ladin population; regarding this point, Toniatti talks about a union between guaranteed representation (*rappresentanza garantita*) and (legally) assured representation (*rappresentanza assicurata*), see R. Toniatti, *L'evoluzione*, cit., at p. 49; cf. Italian Constitutional Court, judgment no. 261 of 14 June 1995.

<sup>73</sup> It is also important to underline, since 2001, the rotation of the Presidency of the Council, with a German President for three months and then an Italian one, or also a Ladin, with the consent of the majority of the groups, and two Vices of two different linguistic groups from that of the President.

the composition of the government of Trento, where there are no particular measures to safeguard minorities, the second part of the article states that “the composition of the Provincial Government of Bolzano must reflect the numerical strength of the linguistic groups as represented in the Provincial Parliament”.<sup>74</sup> This is the provision of the so-called ‘implicit coalition’<sup>75</sup> which, without any corporate or fixed mechanism, seems to leave to the parties in the Council the choice of forming a complete, concurrent or weak coalition; however, an important restriction is that the linguistic groups should be represented according to their consistence in the local parliament.<sup>76</sup> I will now explain how this norm has operated in practice. Before that, it must be said that the President and the *assessori* (the executive members) are elected through different and secret votes and must obtain the absolute majority of the preferences of the members of the Council. The components of the government, according to art. 50.2, can also not be members of the Council, but in that case a two-thirds vote is needed for their election, together with the proposal of one or more Council groups and the consent of every linguistic group supporting the government coalition.<sup>77</sup> After prescribing that the two Vice Presidents of the Province have to belong to the German- and the Italian-speaking groups, article 50.3 (as modified in 2001) prescribes that there could be a Ladin seat in the government: this effectively overrepresent the actual consistence of that group in the

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<sup>74</sup> This governmental provision was established also for the municipal executive of Bolzano, art. 61: “In communes in the Province of Bolzano each linguistic group has the right to be represented in the municipal government if there are at least two Members belonging to that group in the Municipal Council.”. This measure, with the implicit coalition, for Toniatti are examples of assured representation (R. Toniatti, *L’evoluzione*, cit., at p. 51).

<sup>75</sup> For an extended definition of this concept see S. Wolff, *Complex Power-sharing as Conflict Resolution*, cit.

<sup>76</sup> Therefore, a simple majority of votes is not sufficient to form a government. To understand the effect of the implicit coalition, this measure is to be considered together with the ethnic distribution for the Vice Presidency of the Council and the rotation of the Presidency, even though the Council Committee seats are usually selected on political bases, also because of the difficulty to allocate them to all linguistic groups.

<sup>77</sup> O. Peterlini, *Forma di governo*, cit.

Council and constitutes an exception to the principle of proportionality. However, referring to the article, this could only be possible with the resignation of the Ladin President or Vice President of the Council, if the Ladin representative is only one (this is usually the case). In few words, the reform of 2001 permits an overrepresentation<sup>78</sup> of the Ladin group in the government.<sup>79</sup> Summing up, the Statute does not explicitly impose a grand coalition but allows parties to make agreements also (and mainly) upon political bases – just guaranteeing the presence of linguistic groups in the government according to their consistence in the Council – and leaves a significant space to form an opposition.

Indeed, the most protective guarantees for the Italian minority are found elsewhere, for instance in veto mechanisms enshrined in peculiar voting methods for the Council, such as the vote for each linguistic group. Moreover, the norm of the implicit coalition was not born with the (Second) Autonomy Statute 1972 but was also envisaged by the previous (First) Statute of 1948 (art. 30), for the composition of the *regional* government: in fact, that article, after regulating the modality of election of both the President and the components of the government by absolute majority, states that “the composition of the Regional Government must reflect the numerical strength of the linguistic groups as represented in the Regional Council”.<sup>80</sup> Moreover, in the first statute there were almost the same provisions for the election of Vice Presidents of the Council (art. 43) and the composition of the *provincial* government: according to article 44, “the composition of the Government of Bolzano must reflect the consistence of the linguistic groups as represented in Provincial Council”. This implicit coalition, applied since 1948, permitted the

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<sup>78</sup> A. Lijphart, *Thinking About Democracy: Power-sharing and Majority Rule in Theory and Practice*, London, 2008, at p. 74.

<sup>79</sup> Indeed, if no Ladin is elected, a seat must be allocated to the most voted (Ladin) candidate (art. 48.2). For the Province of Trento (which has 3,5% of Ladins) the representation is territorial with some seats explicitly designed for Ladin constituencies. Cf. O. Peterlini, *Forma di governo*, cit., at p. 80).

<sup>80</sup> It is necessary not to overstate the comparison of the two statutes, because several provisions of the first has never been implemented and the political conditions were totally different (J. Markusse, *Power-sharing and 'Consociational Democracy'*, cit., at p. 87).

consolidation of the so-called ‘parity of esteem’ between German and Italian groups through the years, preserving a high flexibility in its implementation.<sup>81</sup> Furthermore, the Provincial President – always the first candidate of the party and usually the most voted, when the voter can express up to four preferences in the ballot – is elected with the majority of the Council. The strong position of the *Südtiroler Volkspartei* (SVP, South Tyrolean People’s Party) allowed its leaders to be always elected to the presidency, guaranteeing to its candidates an impressive stability and longevity in charge. The last change of the form of the government of South Tyrol is in the provincial law no. 5 of 8 May 2013. According to this document, the President (art. 2.4) by 10 days from his/her election introduces to the Council his/her programme and the composition of the government, whose members are elected in a single and recorded vote of confidence to obtain the majority of the assembly. This system reinforces the legitimation of the President as the head of the executive who is stabilized also with the introduction of the constructive vote of no confidence (art. 2.5), notwithstanding he/she remains elected by the Council.<sup>82</sup> After that law the position of the President of the Province seems to be incredibly stronger than those of the other members of the government,<sup>83</sup> even though article 2.7 prescribes that the executive exercises its functions in a collective way deliberating within the government with the majority rule but also respecting the prerogatives of linguistic groups.

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<sup>81</sup> G. Pallaver, *South Tyrol’s Consociational Democracy*, cit., at p. 304 and S. Baroncelli, *Profili costituzionali*, cit.

<sup>82</sup> Art. 5.2: “The Provincial Council may vote a motion of no-confidence toward the President of the Province electing in the meantime a successor. The motion and the motivation shall be signed by at least a quarter of the members of the Council and cannot be voted without the name of the successor and a new programme of government and cannot be discussed before ten days after its presentation. The Council decides on the motion within the successive 30 days. The approval of the motion implicates the resignation of all the Provincial Government”; it is also possible a motion of no-confidence for a single member of the government.

<sup>83</sup> O. Peterlini, *Forma di governo*, cit., at p. 78.

*3.2. The implicit coalition in practice: between a weak consociational government and an executive of moderates*

How have these simple norms worked in practice? First of all, we must keep in mind that the SVP played and plays nowadays the leading role of almost uncontested key player of South Tyrolean politics keeping until 2013 elections the absolute majority of the seats in the Provincial Council.<sup>84</sup> As can be observed in the graphics at points 6.4 and 6.5 (showing the composition of the Provincial Council and Government from 1973 to 2013),<sup>85</sup> the indisputable stability of the SVP as a predominant<sup>86</sup> or regionalist catch-all party<sup>87</sup> with between 19 and 21 seats from 1973 and 2003 (out of 34 and then 35 total seats) is opposed to an equally stable fragmentation in the other German parties, the multi-ethnic Greens and chiefly in the Italian parties (lacking a unifying actor like the SVP is for German voters). At point 6.5 it is clear that for the composition of the government the norm of the Statute encouraged an alliance between SVP and *Democrazia Cristiana* (DC, Christian Democracy, and its junior partners in the central government).<sup>88</sup> Indeed, although the SVP had the numbers in the Assembly to govern alone, a cooperation was necessary with an Italian party.<sup>89</sup> With 28 seats out of 35, undoubtedly the coalition of 1973 between SVP, DC and *Partito Socialista Italiano* (PSI, Italian Socialist Party, composed by 10 members SVP, 4 DC, and

<sup>84</sup> M. Scantamburlo and G. Pallaver, *The 2013 South Tyrolean Election: the End of SVP Hegemony*, in *Regional & Federal Studies*, vol. 24, 2014, p. 493-503.

<sup>85</sup> I preferred to limit the empirical analysis to the period after the approval of the Second Statute and the measures included in the 'Package' (1969).

<sup>86</sup> G. Sartori, *Parties and Party System*, Cambridge, 1976, at p. 174, cf. and M. Scantamburlo and G. Pallaver, *The 2013 South Tyrolean Election*, cit.

<sup>87</sup> O. Schmidke, *Ethnic Mobilization in South Tyrol: A Primordial Identity in Crisis*, in *Innovation: The European Journal of Social Sciences*, vol. 1, 1998, p. 25-42; G. Pallaver, *The Südtiroler Volkspartei and Its Ethno-populism*, in D. Caramani and Y. Mény (eds), *Challenges to Consensual Politics. Democracy, Identity, and Populist Protest in the Alpine Region*, in *Regionalism and Federalism* No. 6, Bruxelles, 2005, p. 187-208; G. Pallaver, *I partiti politici in Alto Adige dal 1945 al 2005*, in G. Ferrandi and G. Pallaver, *La regione Trentino-Alto Adige/Südtirol nel XX secolo - I. Politica e Istituzioni*, Trento, 2007, p. 559-598.

<sup>88</sup> For a complete list of the parties' acronyms see point 6.6.

<sup>89</sup> G. Pallaver, *South Tyrol's Consociational Democracy*, cit., at p. 307.

1 PSI) was grand, even after the exit of the PSI member (replaced by another DC member) in 1976 (because of the end of the centre-left coalition in Rome). Later, after 1978 elections the *Partito Socialista Democratico Italiano* (PSDI, Italian Social Democratic Party) entered the government (composed by 10 SVP, 3 DC and 1 PSDI) and then was substituted by another PSI member from 1983 to 1988 (with 12 SVP, 2 DC, 1 PSI in 1983).<sup>90</sup> To continue the application of the categories exposed in the paragraph 2.2, the government was formed by a concurrent consociational coalition only in the sixth and seventh legislatures with a short majority of support by the Italian parties. In 1983 the situation changed with the increase of the number of Council seats from 34 to 35: with two *Movimento Sociale Italiano* (MSI, Italian Social Movement) and two *Partito Comunista Italiano* (PCI, Italian Communist Party) members of the opposition in the Italian arena, there was parity of support compared to the government parties. Consociation became more than weak, according to O'Leary's classification, resembling rather the 'coalition of moderates' prescribed by the centripetal power-sharing theory. It started to stand out a trend for Italian parties towards fragmentation, which implied a progressive decrease of their representation in the Council, moving from the 11 members of 1973 to 9 in 1988. Remaining influenced by the political incidents in the central State, the electoral growth of the MSI – since 1988 the Italian biggest party with the plurality of Italian seats in the Provincial Council and since 1984 in the municipality of Bolzano/Bozen – reinforced the weakness of the consociational element in the coalition, and in 1983 the Italian members of the government were only 3 (2 DC and 1 PSI) with 10 SVP. Successively, since 1988 elections the biggest Italian party in the governmental coalition, the DC, no longer had the relative majority of the Italian members of the Council, making the executive fall out of O'Leary's category, with the deliberate exclusion of the MSI (and of the interethnic Green Party before, that had reached the same seats of the DC in 1983). During the 1990s, even with some internal divisions the extreme right remained strong, obliging the SVP to fulfil article 50.2 joining its forces with the rests of the DC, namely *Partito Popolare* (PP,

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<sup>90</sup> Id., *I partiti politici*, cit.

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People's Party) and *Partito Popolare Alto Adige* (PPAA, Alto Adige People's Party) in 1993, then respectively *Popolari* (The Populists) and *Il Centro-UDA* (*Unione Democratici Altoatesini*, The Centre-Union of Alto Adige Citizens) in 1998, with the only member of the *Partito Democratico della Sinistra* (PDS, Democratic Party of the Left) in 1993 and then *Progetto Centro-sinistra* (PrCS, Centre-Left Project) in 1998 (in both governments 8 SVP, 2 former DC and 1 leftist member). The election of 2003 confirmed the trend of the decade before with a government formed by 9 SVP members, 1 *Insieme a Sinistra* (Together to the Left) and 1 *Unione Autonomista* (UA, Autonomist Union). By this overview, it is clear how in the 1998 and 2003 elections the weakness of the consociational element remained present in the executive, where there were only 3 out of 9 and 2 out of 7 Italians in government (referring to the members of the assembly). This situation did not change in 2008, even with the little re-composition of the fragmented Italian parties with the foundation of the *Partito Democratico* (PD, Democratic Party) when a government was formed with 7 SVP and 2 PD members. Finally, in 2013 elections the number of Italian members lowered from 7 to 5 – counting as Italian one member of the Greens, while the member of the *Movimento 5 Stelle* (M5S, Five Star Movement) is German<sup>91</sup> – with only one member in the executive. For the first time since 1948, the SVP lost the majority of the Council seats and the coalition with the PD is a minimum winning one necessary not only to fulfil article 50.2 but properly to reach the majority of the assembly.

Going back for a moment to the analysis of the institutions, between the end of 2016 and the first months of 2017 some tensions developed around the possibility of introducing the direct election of the Provincial President in the new proposal for the electoral law – needed for some technical reasons (because since 2001 South Tyrol has not had a unique electoral law but adapted previous norms). The supporters of this proposal, except the SVP, were the other German parties, the *BürgerUnion-Südtirol-Ladins* (Union of the South Tyrolean and Ladin citizens) and *Die Freiheitlichen* (DF, The Libertarians),

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<sup>91</sup> Cf. M. Scantamburlo and G. Pallaver, *The 2013 South Tyrolean Election*, cit.

whereas the Greens and Italian parties were clearly contrary (and the Italian right-wing parties proposed another direct election for an Italian Provincial Vice President). Since the lack of a two thirds majority would have entailed a confirmative referendum (and the direct election also for the Vice President a probable win of a non-PD candidate), in the first months of 2017 the proposal has been abandoned by the SVP. In the new provincial law no. 14 of 19 September 2017 (first approved in early May), we can find the confirmation of the proportional list representation, the election of the President within the Council, the constructive motion of no confidence, the limit of three mandates and the number of governmental members increased from 7 to 10. The abandoning of the first proposal shows the Council's belief that the presidency does not need further powers and that a direct election could have become a dividing element.

After this diachronic description of the institutions, let me add some considerations. First, the provision of the implicit coalition basically worked well for many years, allowing for a stable executive without diminishing minority guarantees. Article 50.2 is an institutionalization of power-sharing close to the consociational form of government, but it also permits several choices for the parties about how to form the coalition. More in detail, from a predominant position for many legislatures the SVP could almost select its allied and coalition partner, preferring the DC because of the unifying Cristian-catholic background,<sup>92</sup> later moving to a centre or centre-left party, like the PD.<sup>93</sup> Moreover, this mechanism could exclude some parties that strongly opposed autonomy, first on the Italian side with the neo-fascist MSI and its heirs, and then on the German one in the last elections.<sup>94</sup>

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<sup>92</sup> J. Markusse, *Power-sharing and 'Consociational Democracy'*, cit.

<sup>93</sup> M. Scantamburlo and G. Pallaver, *The 2013 South Tyrolean Election*, cit.

<sup>94</sup> The extreme and post-fascist right is historically very strong in Bolzano/Bozen (cf. A. Carlà, *Living Apart in the Same Room*, cit., at p. 203), even though it decreased at last election (but with two seats for the neo-fascist group CasaPound).

Finally, even though many authors underline the consociational feature of the South Tyrolean executive power-sharing,<sup>95</sup> the implicit coalition clause seems to be *also* inspired by the centripetal model: in fact, what has been formed during the last years was very close to the ‘horowitzian’ coalition of moderates<sup>96</sup> where, together with the duty to represent linguistic groups in the government (as in the Council), the possibility to include and more importantly to exclude some parties which oppose autonomy and power-sharing has been crucial for government formation and stability. The predominance of one single party in the majoritarian ethnic arena has also contributed and contributes today to support and facilitate this peculiar stable situation, together with demography – namely, the average of 70% of Germans,<sup>97</sup> the particular combination of other consociational mechanisms that allowed these centripetal developments and above all the fixity of the Statute and the constitutional norms, as I will explain the conclusion of this article.

#### *4. The Executive, the First and Deputy First Minister of Northern Ireland: the liberalization of the consociation after many suspensions*

##### *4.1. From the division of offices to the formalized bargaining of the sequential allocation of governmental seats*

Notwithstanding the majoritarian tradition of British politics and institutions,<sup>98</sup> the Agreement of 1998 prescribes a strongly

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<sup>95</sup> R. Toniatti, *L'evoluzione statutaria*, cit.; S. Wolff, *Complex Power-sharing as Conflict Resolution*, cit. and id. *Power-sharing and the Vertical Layering of Authority*, cit.; G. Pallaver, *South Tyrol's Consociational Democracy*; cit.; S. Baroncelli, *Profili costituzionali*, cit.

<sup>96</sup> D. L. Horowitz, *The Northern Ireland Agreement*, cit.

<sup>97</sup> J. Woelk, F. Palermo and J. Marko, *Tolerance Through Law*, cit.

<sup>98</sup> This majoritarian tradition can work in homogeneous societies but seems to be inappropriate in deeply divided ones, like Northern Ireland, where the majoritarian group can permanently control the minority (H. Hannum, *Autonomy*, cit., at p. 243). Hannum wrote – already in the 1996 edition of his book – that a power-sharing government in Northern Ireland could meet some hurdles because of the influence of Westminster authorities.

formalized consociational executive unlike the Sunningdale Agreement of 1973, declining the parity of esteem between unionists and nationalists. Putting aside the question of devolved competences and the different diffusions of power,<sup>99</sup> the procedures ruling the selection, election and formation of the Northern Irish government are in the third part of the Agreement named “Strand One: Democratic Institutions in Northern Ireland”. After describing the composition and the operation of the Assembly, in the paragraph “Executive Authority” the document focuses on the formation of the executive. According to art. 14, the First Minister (FM) and the Deputy First Minister (DFM) have together the executive authority with equal powers<sup>100</sup> with a government composed by at most ten Ministers with department responsibilities. Analysing first the selection of Ministers, the innovation of the Agreement is the introduction of sequential and proportional allocation (SPA) rules to appoint governmental seats.<sup>101</sup>

Conforming to these mechanisms, government coalitions do not originate from bargaining between parliamentary parties, that could be lacerating in deeply divided places, but from automatic rules where the proportionality degree is determined by the divisors operated and by the number of available seats.<sup>102</sup> Implemented before 1998 to allocate seats in the European and Scottish Parliaments Committees,<sup>103</sup>

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<sup>99</sup> In the 1998 Agreement there is a list of specific devolved competences (the opposite of South Tyrol, with a specific list for the centre).

<sup>100</sup> During negotiations, the hypothesis of an executive composed by a panel of three members (two unionists and one nationalist) was rejected (D. L. Horowitz, *The Northern Ireland Agreement*, cit., at p. 98).

<sup>101</sup> B. O’Leary, B. Grofman and J. Elklit, *Divisor Methods for Sequential Portfolio Allocation in Multi-Party Executive Bodies: Evidence from Northern Ireland and Denmark*, in *American Journal of Political Science*, vol. 49, 2005, p. 198-212.

<sup>102</sup> C. McCrudden, J. McGarry, B. O’Leary and A. Schwartz, *Why Northern Ireland’s Institutions Need Stability*, in *Government and Opposition*, vol. 51, 2016, p. 30-58; J. McGarry and B. O’Leary, *Power-sharing Executives*, cit., at p. 499.

<sup>103</sup> The d’Hondt method was proposed by the Social Democratic Labour Party (SDLP) and then accepted by the Ulster Unionist Party (UUP). Familiar to their leaders (both members of the European Parliament), the divisor advantages the biggest parties: the inclusion of the Sein Féin (SF, Together United) was necessary for political stability and the d’Hondt was seen by the head of the UUP Trimble as a concession to the SDLP to defend itself against the SF’s electoral

in the Brussels-Capital Region and four Danish municipalities governments,<sup>104</sup> the SPA has been introduced in Northern Ireland applying d'Hondt divisors to the parties represented in the Assembly<sup>105</sup> to allocate Ministerial posts (art. 16) and members of Assembly Committees (art. 8). In practice, parties, after being ranked conforming to their electoral results, can choose which available Ministries to catch, splitting the most important ones in earlier divisions with highly strategic behaviours necessary to elaborate their preferences<sup>106</sup> and common tactics.<sup>107</sup> The choice to take a ministerial post is not compulsory and it is possible for a party to refuse the allocation or to change its appointment (art. 21).

From 1998 to 2007 the FM and the DFM were elected together with cross-community vote, namely with parallel consent, a vote that requires not only the majority of the Assembly but also those of the unionists and nationalists (art. 15 and 5d.i of the paragraph "Safeguards").<sup>108</sup> Before the change of this article, it was established

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growth (McGarry and O'Leary, *Power-sharing Executives*, cit., at p. 507). Even the inter-ethnic Alliance Party of Northern Ireland (APNI) accepted the divisor, not disadvantaged in case of good electoral results. It seems that the origin of a model of SPA of the executive seats was academic (before the SDLP proposal): indeed, in 1993 a think-tank linked to the Labour Party proposed the Sainte-Laguë/Webster to elect the government. See B. O'Leary, B. Grofman and J. Elklit, *Divisor Methods*, cit., at p. 206.

<sup>104</sup> The most particular aspect of the Danish SPA is the possibility of post-electoral coalitions of parties during the assignation (B. O'Leary, B. Grofman and J. Elklit, *Divisor Methods*, cit., at p. 205).

<sup>105</sup> D'Hondt divisors were invented in 1785 by the homonymous Belgian mathematician and before him by Jefferson to allocate the House of Representative seats between the States (rule used between 1790 and 1830). The d'Hondt method to assign governmental offices based on parliamentary seats allocates the first office to the biggest party and then dividing the quota of the assigned for a numeric sequence (1,2,3,4...), distributing all the available posts to the other winners of each division. The number of the offices (or seats) must be known in advance. The similar Sainte-Laguë/Webster method uses a different numeric sequence (1,3,5,7...) favouring smaller parties.

<sup>106</sup> B. O'Leary, B. Grofman and J. Elklit, *Divisor Methods*, cit., at p. 204.

<sup>107</sup> B. O'Leary, *The Logics of Power-sharing*, cit., at p. 82.

<sup>108</sup> This rule was chosen to have unionist and nationalist candidates to the head of the executive that could be accepted by the other bloc. This mechanism has

that the two posts had to be shared between unionists and nationalists without the specification of who must take which office. Inasmuch, the evolution of the political system brought some authors to talk of a ‘quasi-presidential’ or a diarchic premiership.<sup>109</sup> ‘Quasi’ is because the Ministers are not appointed by the heads of the executives and a hypothetical motion of no confidence or resignation does not provoke the immediate dissolution of the Assembly, as I will say in a moment. Later, the method of parallel consent was modified by the Saint Andrews Agreement of 2006 which extended in practice the d’Hondt procedure even for the selection of FM and DFM.<sup>110</sup> Indeed, since 2006 the FM is nominated by the biggest party of the Assembly, while the DFM is appointed by the largest party of different designation (unionist, nationalist or other) from the FM’s one (art. 9, Strand 1),<sup>111</sup> to avoid the situation of both offices held by two unionists or two nationalists and to give the possibility to a party designed as other to gain one of the two posts. Furthermore, it is important to report that the resignation or death of the FM or the DFM entails the end of both offices and new elections, if the party which appointed the resigning fails to designate a successor by seven days.<sup>112</sup> Moreover, there isn’t a real vote of confidence for the formation of the government, rather a potential motion of no-confidence (art. 25, 1998 Agreement,

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a clear centripetal nature (a sort of vote pooling) to favour the moderate largest party for each segment (J. McGarry and B. O’Leary, *Power Shared*, cit., at p. 51-72).

<sup>109</sup> B. O’Leary, *Comparative Political Science*, cit., at p. 55.

<sup>110</sup> C. McCrudden *et al.*, *Why Northern Ireland’s Institutions*, cit., at p. 33. As some authors proposed during the years before: B. O’Leary, *Comparative Political Science*, cit., at p. 78; S. Wolff, *Between Stability and Collapse: Internal and External Dynamics of Post-Agreement Institution in Northern Ireland*, in S. Noel, *From Power-sharing*, cit., p. 44-66, at p. 62; J. McGarry and B. O’Leary, *Power Shared*, cit., at p. 51.

<sup>111</sup> “The Nominating Officer of the largest party in the largest designation in the Assembly shall make a nomination to the Assembly Presiding Officer for the post of First Minister. The Nominating Officer of the largest party in the second largest designation in the Assembly shall similarly nominate for the post of Deputy First Minister” (art. 9, Strand 1). Moreover, in the 2006 Agreement (art. 15), it is no longer allowed to change one’s own political designation (nationalist, unionist, or other) during the Assembly sessions without a change of the designation of the party.

<sup>112</sup> Northern Ireland Act of 1998 art. 16b, later amended.

“Executive Authority”) which must be approved with parallel consent if the Minister (or also the FM or the DFM) has breached the Pledge of Office or the Ministerial Code of Conduct (art. 23).<sup>113</sup>

Retaking the classification proposed in paragraph 2.2 these rules produced a coalition government almost necessarily as a complete or a concurrent consociation.

#### *4.2. The destabilising relationship with the centre: old and new crises of the Northern Irish executive*

After the recognition of the formal rules, I will now scrutinize how those institutions have worked in practice. It is possible to divide the history of Northern Irish government after 1998 in two periods. The first phase since 1998 to 2006 was one of instability. According to some scholars, this instability would be the proof of a chronic malfunction of the SPA allocation of seats which would have made it difficult for unionist to accept a compromise because of the inclusion of the extremes (particularly of the *Sinn Féin*, SF, Together United).<sup>114</sup> Similarly, somebody has written that the executive instability can be credited to a (not very clarified) loss of legitimation of the parties and to the imposition of the consociational model.<sup>115</sup> Conversely, for a more precise analysis it could be useful to start from the first crisis between 1999 and 2000, when the stability and the executive

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<sup>113</sup> The Pledge, differently from the British Oath of Allegiance, shows the binational nature of the region (B. O’Leary, *The Logics of Power-sharing*, cit., at p. 83). Furthermore, in 2006 agreement art. 2 (Strand 1) established a “statutory ministerial Code” and art. 8 foresees the broadening to the Pledge of Office to the participation into the North-South Ministerial Council and the British-Irish Intergovernmental Conference and the recognition of the joint nature of the FM the DFM.

<sup>114</sup> D. L. Horowitz, *The Northern Ireland Agreement*, cit.

<sup>115</sup> As we will see for the 2015 crisis, during a corruption scandal, the most violent opponents to the FM Robinson were the UUP and the SDLP, whereas his coalition partner SF remained silent, remembering that the year before the DUP had not criticized the temporary arrest of the SF President Adams (then released, cf. J. McGarry and B. O’Leary, *Power-sharing Executives*, cit., at p. 516).

weakness were ascribed to the possibility of suspending autonomy.<sup>116</sup> Indeed, at the end of 1999 the FM Trimble (Ulster Unionist Party, UUP), pressed by the unionist parties gathered in the Ulster Unionist Council, signed a letter of resignation declaring that it would have been effective if Irish Republican Army (IRA) had not started the decommissioning within a certain date.<sup>117</sup> Even though the decommissioning was started, its modalities were considered not sufficient by Trimble, so the Secretary of State Mendelson obtained from Westminster the emergency power to suspend the Assembly to avoid that Trimble's resignation became effective. Thus, after the parliament of London approved the Suspension Act, in February the Secretary suspended Northern Irish institutions, justifying his action with the necessity of saving Trimble from more radical unionists.<sup>118</sup> This deadlock was overcome at the end of May with the establishment of an international commission for the decommissioning and the restoration of the autonomy.<sup>119</sup> The suspension (in few words: no government with the SF before the beginning of the IRA decommissioning) found no legal justification, neither in the non-violence principles written by the US Senator Mitchell at the conclusion of the conflict nor in the 1998 Agreement and especially in the 1998 international treaty between United Kingdom and the Republic of Ireland which clearly prescribed, in the case of obstacles to implementation, a compulsory consultation with the government of

<sup>116</sup> In December 1998 there was a first confused moment when the elections of the FM and the DFM were blocked by those of the executive ministers, whose number (up to ten) needed to be established by cross-community vote. There was another deadlock in the first months of 1999, when the Deputy Mallon resigned to protest Trimble's pushing for the IRA decommissioning before government formation. The Assembly was not dismissed because not yet working under the Northern Ireland Act, that became effective the same year. Soon after, Mallon was substituted by Durkan (cf. B. O'Leary, *Comparative Political Science*, cit., at p. 77; id., *The Logics*, cit., at p. 77).

<sup>117</sup> B. O'Leary, *Comparative Political Science*, cit., at p. 78; P. Mitchell, G. Evans, and B. O'Leary, *Northern Ireland: Flanking extremists bite the moderates and emerge in their clothes*, in *Parliamentary Affairs*, vol. 54, 2001, p. 725-742, at p. 729.

<sup>118</sup> J. McGarry and B. O'Leary, *Power Shared*, cit., at p. 43.

<sup>119</sup> Stalemate that could be overcome with new elections or modifying the norm about the election of the FM, if the resignation of Trimble became truly effective.

Dublin and all Northern Irish parties, provisions apparently without effectivity with reference to the British doctrine of parliamentary sovereignty.<sup>120</sup> The consequences of this first suspension were the idea that the Agreement was vulnerable to the actions of the FM Trimble, of the Secretary of State and the central government, the delegitimization of Northern Irish institutions and the British direct rule as an alternative to power-sharing. Six months later another crisis shook Belfast, when Trimble adopted more intransigent behaviours against the SF<sup>121</sup> accusing the party of slowing down the IRA decommissioning process. After Trimble's resignation and the stalemate during negotiations, in August the new Secretary Reid suspended the autonomy for 24 hours and then again in September (for technical reasons) to force the parties to reach an agreement. When in November Trimble and the DFM Durkan (Social Democratic and Labour Party, SDLP) presented themselves again to the Assembly, even with 70% of votes, the unionist majority could be obtained only with the support of the multi-ethnic Alliance Party of Northern Ireland (APNI) members, who declared themselves unionists only for that vote.<sup>122</sup> The fourth suspension occurred during October 2002 with the same dynamics: notwithstanding the communication of the international commission that the

<sup>120</sup> The British-Irish Agreement (1998); B. O'Leary, *The Logics*, cit., at p. 103. As is well known, the United Kingdom has no written constitution nor a unified constitutional doctrine. Thus, the principle of parliamentary sovereignty has not been uniformly and consensually applied over the territory. Indeed, according to Keating, the Northern Irish question involves a constitutional dimension because until the 1990s parliamentary sovereignty has avoided to give the self-government of the other nations of the Kingdom; however, if we look at British constitutionalism in the 19<sup>th</sup> and the 20<sup>th</sup> centuries as formalized by Dicey, for instance, it is based on parliamentary sovereignty *but also* on rule of law and separation of powers; cf. M. Keating, *Territorial Autonomy in Nationally Divided Societies: The Experience of the United Kingdom, Spain, and Bosnia and Herzegovina*, in K. Basta, J. McGarry and R. Simeon, *Territorial Pluralism*, cit., p. 121-147.

<sup>121</sup> Before that, Trimble blocked the participation of two SF Ministers into the North-South Ministerial Council. The Ministers and the SDLP DFM won an appeal claim to a Northern Irish court, even though the judgement was declared to have no judicial effect (P. Mitchell, G. Evans and B. O'Leary, *Northern Ireland: Flanking*, cit., at p. 729).

<sup>122</sup> J. McGarry and B. O'Leary, *Power-sharing Executives*, cit., at p. 511.

decommissioning was effectively going on, once again Trimble announced his resignation and Reid suspended the devolution and declared the return of a temporary direct rule, without specifying the date of the restoration of power-sharing.<sup>123</sup> In those years decommissioning proceeded slowly and all negotiations failed, especially after the polarization during the election of 2003 where, as showed in the graphic at point 6.2, the ‘radical’ Democratic Unionist Party (DUP) and the SF won over the UUP and SDLP becoming the majoritarian parties within unionist and nationalist blocks and necessary partners of future negotiation. Tension increased but never fell again in an armed conflict.<sup>124</sup> The *impasse* was solved only in 2005 when negotiations re-started after many statements with which the UK government indicated that it would repeal the power of suspension and promised to devolve the delicate competences of justice and policing, in case an agreement between the parties was reached. Moreover, several meetings between the Irish and the British executives prospected a future of joint sovereignty.<sup>125</sup> More funds promised by the British Chancellor of the Exchequer Brown and his Irish counterpart overcame all the remaining resistances from the DUP to share the power and from the SF to recognize the local police. The Saint Andrews Agreement came into force in October 2006 and, after an intermediate period (with the re-convocation of the Assembly elected in 2003 and new elections in 2007), in May 2007 autonomy and power-sharing were restored. From 2007 to the end of 2016, power-sharing executives worked without serious crises, starting a coalition agreement between the DUP and the SF, with Rev. Paisley as FM and McGuinness (a former IRA commander) as Deputy. The government worked quite well even with Paisley’s successor,

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<sup>123</sup> S. Wolff, *Between Stability*, cit., at p. 44.

<sup>124</sup> Wolff underlines that the deaths after 1998 are related to internal feuds within two unionist paramilitary groups, the Ulster Volunteer Force and the Ulster Defence Association (Wolff, *Between Stability*, cit., at p. 54-55).

<sup>125</sup> J. McGarry and B. O’Leary, *Power Shared*, cit., at p. 35. In the last years of his government, Blair “[reinforced] the message (...) that the default to power-sharing was no longer simply direct rule, but direct rule with an increasing green hue” (J. McGarry and B. O’Leary, *Power Shared*, cit., at p. 43).

Robinson, who collaborated with McGuinness so closely<sup>126</sup> that somebody thought it was time for another institutional change to 'return' to the 'government and opposition' dynamics.<sup>127</sup> Anyway, in 2010 there was another Agreement at the Hillsborough Castle for the devolution of justice and policing, introducing a Department of Justice whose Minister is elected with cross-community consent.

Another critical moment was after the 2015 elections with Cameron administration's welfare cut.<sup>128</sup> Few months later, the FM Robinson was involved in some corruption scandals.<sup>129</sup> Invalidated by these legal problems and taking advantage from a delicate police investigation around some murders of former IRA chiefs, Robinson asked for the suspension of the Assembly. Because of the refusal of all parties, as well as of the Irish and British governments, Robinson stepped aside, not officially resigning but allowing the Minister of Finance, Arlene Foster, to become a sort of unofficial FM, with serious doubts of legality. After the 2016 election and the referendum for the permanence in the European Union (where the majority of Northern Irish citizens voted to 'remain'), another moment of severe instability occurred at the end of 2016. A serious scandal of corruption in the energy sector involved Foster herself and a no confidence vote proposed by SDLP members was rejected in December, obtaining a majority in the Assembly but only with most unionist votes (with all parties favourable except the DUP) necessary for the parallel consent. In January this harsh crisis brought to the resignation of McGuinness and the SF's refusal to appoint another DFM by seven days without the resignation of Foster, bringing Northern Ireland again to the vote. The 2017 election together with the reduction from 108 to 90 members of the Assembly saw an

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<sup>126</sup> C. McCrudden *et al.*, *Why Northern Ireland's Institutions*, cit., at p. 31; J. McGarry and B. O'Leary, *Power-sharing Executives*, cit., at p. 508.

<sup>127</sup> The institutions were blamed to hinder the development of 'normal' politics on bread-and-butter issues (C. McCrudden *et al.*, *Why Northern Ireland's Institutions*, cit., at p. 31; cf. D. L. Horowitz, *Northern Ireland Agreement*, cit., at p. 94-104.

<sup>128</sup> Those austerity policies provoked a brief success of a radical leftist party, the People Before Profit (PBP), downsized in the election of 2017 because of the strong ethno-national re-polarization.

<sup>129</sup> C. McCrudden *et al.*, *Why Northern Ireland's Institutions*, cit.

electoral collapse of the DUP, which prevailed over the SF for only one seat. After failures of several talks to form the government, the polarizing snap election of Westminster (which consolidated the DUP as the ‘single voice’ of unionism) and the Tory-DUP coalition agreement, the situation after summer 2017 became uncertain.

Finally, many authors criticized the institutional system of Northern Ireland accusing it of provoking instability, avoiding ministerial accountability and crystallizing the divisions of society within the executive.<sup>130</sup> Instead, in my opinion the d’Hondt method worked satisfactorily, reflecting the proportionality and the balance between and within the blocks and posing no problems of bargaining and acceptance of a common platform or programme, with incentives for parties to increase their electoral force and to moderate their position.<sup>131</sup> Indeed, the SPA included parties with a relevant electoral strength not only for ethnic belongings (see point 6.3).<sup>132</sup> More in detail, after the first government composed by 3 UUP and SDLP and 2 DUP and SF members, the second allocation in 2007 rewarded the electoral growth of the DUP with 4 posts, then 3 to the SF, 2 to the UUP and 1 to the SDLP; in 2011 even the APNI reached an executive seat in the place of the DUP and held the Minister of Justice (until 2016, elected with cross-community vote), while in 2015 the DUP obtained another seat left empty by the UUP. In 2016, the coalition gave a strong proof of voluntarism when the SDLP and the UUP refused to take the ministerial seats allocated to them and freely decided to constitute an opposition, permitting a composition of the government with 4 DUP and 3 SF members, with an independent unionist as Minister of Justice: thus, the coalition could shift from a unanimous to a concurrent form.<sup>133</sup> Consequently, the only

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<sup>130</sup> R. Taylor, *Norther Ireland: Consociation*, cit.; R. Taylor, *Consociational Theory*, cit., p. 1-12.

<sup>131</sup> C. McCrudden *et al.*, *Why Northern Ireland’s Institutions*, cit., at p. 37.

<sup>132</sup> Simulations show that the number of governmental seats allocated to the Alliance would not change with the Sainte-Laguë system because of the low number of the Ministers (C. McCrudden *et al.*, *Why Northern Ireland’s Institutions*, cit., at p. 40).

<sup>133</sup> The choice of refusing executive seats does not affect the distribution of Committee seats. Furthermore, even though there was no provision in the Agreement of 1998 establishing a minimum of Ministers for unionists or

voluntariness that is not allowed by the SPA methods for one or more parties is the possibility of excluding others from the allocation of governmental seats.

In conclusion, the instability of the first years was provoked not by the inclusion of the ‘extremes’<sup>134</sup> but – if one should point to a ‘responsible’ institutional procedure – by the mechanism ruling the resignation of the FM and the DFM. This ‘atomic bomb’ in the hands of the heads of the executives and the conflictual divisions within the unionist block allowed the return to a sort of a new direct rule of UK government despite the international commitments taken in 1985 and 1999. This situation allowed the unionists to act against the Agreement, preventing a party with a relevant electoral force (the SF) from entering the government and linking the formation of the executive to the IRA decommissioning, despite this was already being managed by an international commission. Moreover, the British benevolence toward Trimble and the mild reactions of the Irish government facilitated that development. Finally, governmental instability can be explained by the fact that autonomy can be suspended if the FM (or the DFM) resign. In other words, by the connection or better the subordination of autonomy to the will of the (unionist, at least in these years) head of executive. After the first suspensions, when an enforced cooperation between the United Kingdom and the Republic of Ireland through the British-Irish Intergovernmental Conference<sup>135</sup> started to be considered as an alternative, the stalemate was unblocked, and unionists accepted to share the power.

##### *5. Conclusion: Northern Irish and South Tyrolean executives compared: differences and lessons*

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nationalists, the rule of at least 3 and 3 was approved by the Assembly in 1998 and then ratified by Westminster (B. O’Leary, *The Logics*, cit., at p. 78).

<sup>134</sup> D. L. Horowitz, *The Northern Ireland Agreement*, cit., at p. 100. The author seems to refer always to the SF, claiming that the inclusion of the republicans in the negotiations in 1998 and then in government ‘caused’ the hostility of the DUP and the instability of the UUP (p. 102).

<sup>135</sup> B. O’Leary 2001, *Comparative Political Science*, cit., at p. 66.

*5.1. Institutions and contexts of two complex regional consociations*

To comprehensively compare the structures of the governments of Northern Ireland and South Tyrol I will focus on some main aspects, as outlined in the framework at point 6.1. The first comparison is between the election or selection of the executive members. In South Tyrol the need to protect minority groups through an implicit coalition ensured political stability also because of to the demographic composition of the Province, the predominance of a party favourable to autonomy and power-sharing and the fragmentation of Italian parties. We saw that that (yet consociational) mechanism, not much formalized in the Statute, allowed the formation of a sort of centripetal coalition of moderates, giving the SVP the possibility to choose its partner excluding radicals with anti-system behaviours. Instead, in Northern Ireland the substantial balance of power between groups, the polarization of unionist parties and the peculiar conformation of the parties in the Assembly required the implementation of a more formalized power-sharing mechanism like the SPA of governmental seats which remained blind to ethnicity and mainly based on electoral results. This system is quite but not perfectly inclusive: indeed, parties can choose to refuse to enter the government while they cannot choose to exclude other parties with a relevant electoral force from the allocation. To conclude, both implicit coalition and sequential allocation are liberal power-sharing mechanisms, which worked basically well referring to diverse needs and contexts.

The second comparative thread concerns the heads of government. Background conditions previously described pushed Northern Ireland to adopt in 1998 the corporative procedure of parallel consent (the majority of the Assembly and the majority of unionists and nationalists) to elect the FMI and DFM, practically prescribing a sort of centripetal vote pooling – considering that members of one group must vote also for the candidate proposed by the other group to obtain the majority of the Assembly. Instead, the changes of 2006 substantially extended the d'Hondt method to the selection of governmental heads, 'liberalizing' these offices with the

nomination of FM for the strongest party of the Assembly and DFM for the largest party of the major declaration of the Assembly after the one of the FM. On the other hand, in South Tyrol the almost structural impossibility for the Italian group to compete for the presidency of the Province did not need specific mechanisms and recent proposals for a direct election of the *Landeshauptmann* (President of the Province) were seriously contested. We can say that these procedures permitted an incredible stability of the leadership in South Tyrol with only three presidents (Magnano, Durnwalder and Kompatscher) in forty-four years after the Second Statute and forced long-lasting enemies to join a common government in Northern Ireland.

Third, considering the relationship between government and assembly, the vote of no confidence requires the absolute majority of the Council in South Tyrol (but has never been successfully used because of the supremacy of the SVP), while in Northern Ireland parallel consent is prescribed, with some problems of instability when the greatest party in the Assembly, the DUP, can decide alone on the life of executive.

Finally, the fourth comparison is on the dissolution of the Assembly in Northern Ireland where are requested a two third vote or, after the resignation of one head of the government, a vacancy of the office for more than seven days. The resignation mechanism is above all the most problematic, if directly connected to the status of Northern Irish autonomy. As I have reported, the threat of Trimble's resignation worried the British government that, scared to lose its moderate unionist FM and based on the doctrine of parliamentary sovereignty, acted in breach of the Agreement of 1998 and the international treaty with Ireland of 1999. In the Italian case, Rome has never meddled in the affairs of the South Tyrolean executive after 1972, allowing an internal management of possible crises. Even though the two post-conflict scenarios are extremely different – the Statute was approved in 1972 after the brief period of political violence terminated ten years before, whereas the Agreement of 1998 concluded a bloody conflict, with 3600 deaths – and the following is not the only explaining factor, it could be stated that the attitude of the British government toward autonomy played a de-stabilising role

in the peace process in giving the unionists a sort of veto power on power-sharing.

### 5.2. *Political stability and lessons from the cases*

Following a McCulloch's expression,<sup>136</sup> political and democratic stability can be imagined as a continuum: we can find a stable political order to an extreme, namely a democratic regime with a high probability of remaining stable in its forms and a low incidence or threat of political violence;<sup>137</sup> while, at the opposite pole of the spectrum, there is a total absence of capacity of maintaining democracy and avoiding violence. Even assuming that no institution alone can guarantee peace and stability<sup>138</sup> but that it is necessary to consider a complex combination balancing the incidence of many factors, in Northern Ireland and South Tyrol the structures of autonomy and executive power-sharing were essential to cease violence, regulating the dialogue between the groups. Approximately in the middle of the broad spectrum of political stability we can supposedly locate executive stability, which could be defined as the high probability for the government to remain in office for the time it has been appointed and to exert its functions.

As I tried to show, the 'efficient secret'<sup>139</sup> of the stability of South Tyrol lies in the double nature of the Statute which sets some guarantees for the Italian and Ladin minorities in the self-government dimension requested by the German majority. There were several facilitating conditions which have helped to solve this conflict,<sup>140</sup> but the relationship between autonomy and executive power-sharing

<sup>136</sup> A. McCulloch, *Power-sharing and Political Stability*, cit., at p. 6.

<sup>137</sup> A. Lijphart, *Democracy*, cit., at p. 4.

<sup>138</sup> J. McGarry and B. O'Leary, *Power Sharing Executives*, cit., at p. 512.

<sup>139</sup> The term is of course from W. Bagehot, *The English Constitution*, ed. by P. Smith, Cambridge, 2001, 1<sup>st</sup> edition 1867.

<sup>140</sup> S. Wolff, *Complex Power-sharing*, cit.; T. Benedikter, *The World's Working*, cit.; G. Pallaver, *South Tyrol's Changing Political System: From Dissociative on the Road to Associative Conflict Resolution*, in *National Papers*, vol. 42, 2014, p. 376-398.

Guido Panzano

*Power-sharing Executives in Northern Ireland and South Tyrol:  
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played a crucial role. Anyhow, some authors recognize that South Tyrol is slowly shifting from a dissociative to an associative conflict resolution model, moving from a complete division of groups to a gradual overthrow of the separating walls. Even with some critical issues reported, Pallaver states that the consociational and territorial guarantees created the atmosphere of security between the groups essential to build a feasible trust firstly between political and economic *élites* and then also among the civil society.<sup>141</sup> In other words, this is the 'efficient secret' of South Tyrolean method of conflict resolution: the virtuous union of autonomy and power-sharing (union as mutual independence of these two elements and respect of the constitutional and international constraints) succeeds in shaping a regional and provincial space where internal management and crisis resolution are possible, thus incentivizing loyal and responsible behaviours. This virtuous union built a common territory, that is no longer source of contrasts but shared dimension, with guarantees for weaker groups formalized in a democracy of compromise. Every inhabitant can benefit from the self-government of the Province, without any difference of language and ethnicity: an autonomy for all<sup>142</sup> or a territorial self-determination<sup>143</sup> which the state cannot unilaterally modify. In this article, I tried to demonstrate that process through the analysis of governmental structures, showing how the implicit coalition clause worked and developed across the years allowing changes in the political system and resisting the tensions of the extremes. Article 50.2 of the Statute of 1972 was both an exclusive and inclusive tool, keeping away from the government parties contrary to autonomy and executive power-sharing. But the declining force of the SVP can become the most difficult challenge in next years, starting from the elections in autumn 2018.

Since 1998 Northern Ireland has done incredible steps forward in terms of violence reduction, but if we look at governmental stability, the results are not equally elevated. The cause lies not in the institutional mechanisms of the executive power-sharing, but in the

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<sup>141</sup> G. Pallaver, *South Tyrol's Changing*, cit., p. 380-93.

<sup>142</sup> T. Benedikter, *The World's Working*, cit., at p. 76.

<sup>143</sup> R. Toniatti, *L'evoluzione statutaria*, cit.

possibility to suspend the devolution precisely since 1999. More specifically, in Northern Ireland what directly influences the governmental life is the default position on autonomy suspension, in other words the alternative to executive power-sharing. From a side perspective, in this paper I analysed how the power-sharing materialized in the SPA of governmental seats, and for the selection of the heads of the executive first in the nomination of a unionist and a nationalist with (corporate) vote mechanisms and then, since 2006, in the designation of the two greatest parties in the Assembly of different political affiliations. These procedures, more inclusive and rigid than the South Tyrolean implicit coalition, satisfied the exigence of a polarized political and party system with an unstable balance between majority and minority. Anyway, the effects of the relationship with the central state are observable through the FM and DFM resignation mechanisms. In fact, since the introduction of direct rule in 1972 and until the first treaty between United Kingdom and the Republic of Ireland in 1985, unionists had no incentive to accept autonomy, which inevitably meant a government with nationalists. The alternative to this solution was the authority of 'their' nation-state and any concession to the 'enemy' was perceived as a possible intromission of Dublin in Belfast affairs. Years later, since 1985 and the birth of the Anglo-Irish Intergovernmental Conference (then British-Irish Intergovernmental Conference) and the change of articles 2 and 3 of the Irish Constitution in 1998 (that claimed the sovereignty over Northern Ireland), the alternative of a joint authority between United Kingdom and Republic of Ireland became real. But in practice this possibility did not concretize. And thus, between 1999 and 2006 the incompleteness of the Northern Irish federacy – namely the possibility of the centre to unilaterally modify the status of the regional entity – created an imbalance between the parts, allowing unionists to block or slow down the effective sharing of power, with the weapon of the resignations as the alternative to suspension. After a change of the strongest actors within the two ethno-national segments, the stalemate has been overcome with the effective possibility of a direct rule with an increasing 'green' role for Ireland, scenario hated by unionists more than the power-sharing with nationalists, which later was established with the formation of quite stable governments for almost ten years. Finally, the current Northern Irish executives' instability

derives from internal and external crises: on the internal side, there is the scandal of the renewable energy incentives which shook the DUP and after the 2017 regional elections halted the formation of the executive. This crisis deteriorated after the Westminster 2017 snap elections almost lost by Prime Minister May's Conservatives, dependent on the unionist support with a confidence and supply government agreement. On the external side, there is the process of the exit of United Kingdom from the European Union, in whose referendum the majority of Northern Ireland voted to remain. Furthermore, the future management of the border blocked the negotiations for both Brexit and the local government. Returning to the internal perspective, 2017 general elections confirmed the trends, started with the 2001 vote,<sup>144</sup> of the DUP and the SF parallel increase and the consequent simplification (favoured by the plurality system) of the party system. Moreover, the DUP shifted from its extremist and anti-Westminster behaviours<sup>145</sup> to become a pragmatic actor within the British government. It seems to return a new version of the so-called West Lothian Question, under which the Scottish and Northern Irish MPs can decide in Westminster parliament on issues regarding England and the whole Kingdom, whereas English MPs cannot do the same for Scotland and Northern Ireland.<sup>146</sup> Moreover, the logical – but also legal – doubt is how London could effectively manage their jurisdiction upon Northern Ireland with “rigorous impartiality on behalf of all people in the diversity of their identities and traditions”, as the Agreement of 1998 prescribed, with a unionist party as junior partner in the central government coalition. While all local parties accuse the Prime Minister May and the former FM Foster of acting against the Agreement of 1998 and the international treaty of 1999, the confused situation on the ground seems to make a (*de*

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<sup>144</sup> Mitchell *et al.*, *Northern Ireland: Flanking*, cit.

<sup>145</sup> The party voted against the Agreement's referendum in 1998; see M. Kerr, *Imposing Power-sharing*, cit.; C. Gormley-Heenan and R. McGinty, *Ethnic Outbidding and Party Modernization: Understanding the Democratic Unionist Party's Electoral Success in the Post-Agreement Environment*, in *Ethnopolitics*, vol. 7, 2008, p. 43-61.

<sup>146</sup> J. McGarry, *Asymmetric Autonomy in the United Kingdom*, in M. Weller and K. Nobbs, *Asymmetric Autonomy*, cit., p. 148-182, at p. 162.

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*facto?*) direct rule possible, after ten years of difficult efforts to reach democratic stability.

This could be the closing lesson from the cases: in a complex regional consociation, the relationship between power-sharing and autonomy can negatively affect the governmental life; in detail, when self-government is subject to revocation from the centre and when autonomy is dependent on the persistence of 'one' executive, the group related to the population of the central state is inevitably favoured, making precarious the agreement between the groups; whereas, when territorial pluralism is guaranteed and autonomy and power-sharing are implemented together but independently, the two principles can work in a sustainable and democratic way, satisfying their original objectives.

In conclusion, this paper would like to contribute to the research on complexity, interpreted as interactions between autonomy and executive power-sharing institutions, analysing their effects on governmental stability. In a pun which seems inevitable, the Northern Irish and South Tyrolean cases demonstrate that the independent union or better the federalization between the dispersion and the sharing of power can guarantee executive stability. When these principles are united but subjected in an unbalanced relationship, the regional consociation will suffer from its non-independence, the state will not be an impartial arbiter, the parity of esteem of the groups will be undermined and the governmental institutions will be exposed to political and demographic changes.

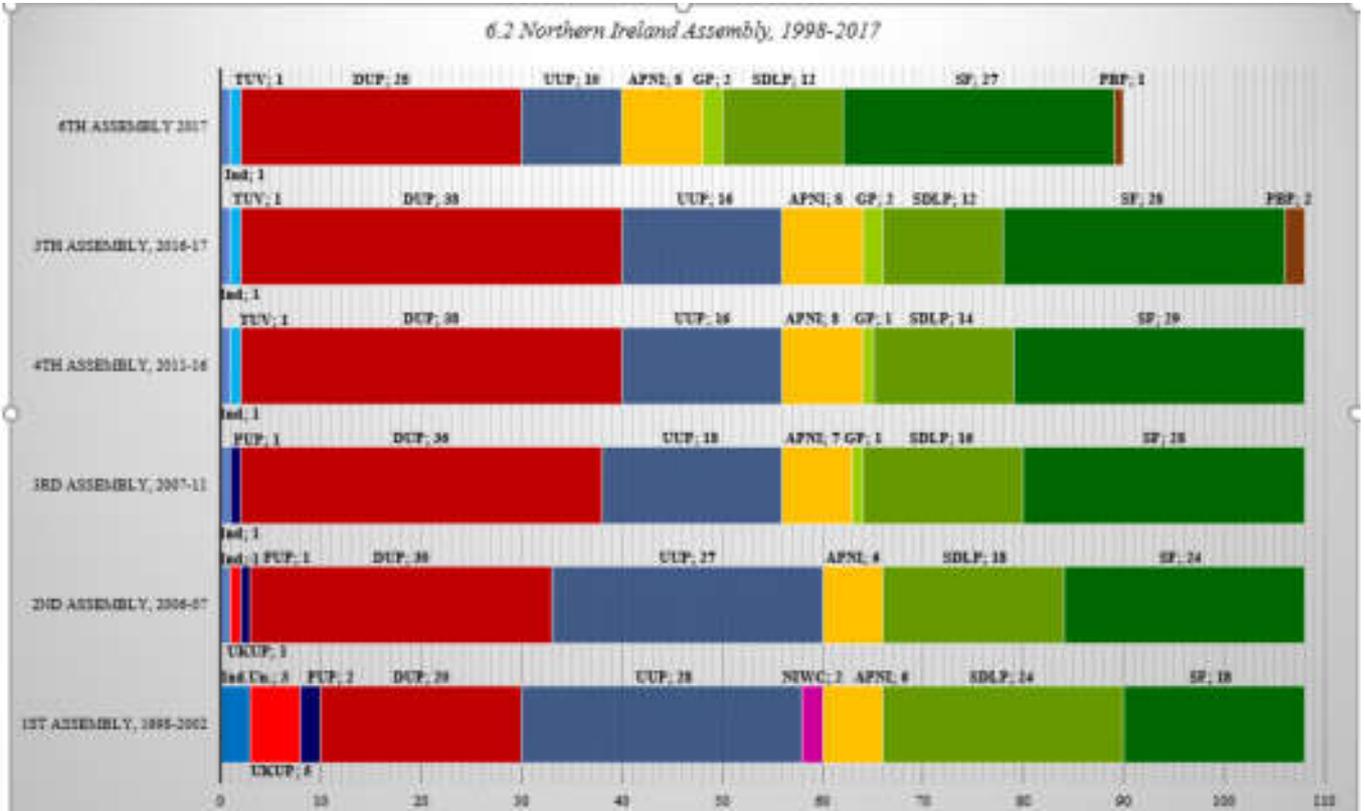
6. Tables and graphics

6.1. Institutional architectures of the governments of South Tyrol  
and Northern Ireland

1. Election/selection of the Executive	
<p>Members of the <i>Giunta (Assessori Provinciali)</i></p> <p style="text-align: center;">↑</p> <p>35 seats Provincial Council (34 before 1983), elected with proportional-list system in a single constituency</p>	<p>1973 - 2013 absolute majority, secret scrutiny</p> <p>2013 – election under the President’s proposal, up to 8 members</p> <p>2017 - between 7 and 10 members</p> <p>Art. 50.2: “<i>The composition of the Provincial Government of Bolzano must reflect the numerical strength of the linguistic groups as represented in the Provincial Parliament</i>”, possible over-representation of the Ladin group</p>
<p>Executive Ministers</p> <p style="text-align: center;">↑</p> <p>Assembly elected with single transferable vote, 18 6-members constituencies for 108 seats, since 2017 5-members constituencies and 90 seats</p>	<p>1998 - 02 SPA with d’Hondt method applied to the parties in the Assembly, up to 10 members</p> <p>2007 - 2016 SPA with d’Hondt method applied to the parties in the Assembly, 10 members</p> <p>2016 - 8 members</p> <hr/> <p>2010 - Minister of Justice elected with <i>cross-community vote</i></p>
2. Election/selection of the Head of the Executive	
<p>President of the Province</p>	<p>Election within the Council with absolute majority</p>
<p>First Minister and</p>	<p>1998 - 2002 election with cross-community vote, parallel consent</p>

Deputy First Minister	2006 – 2016 FM: designed by the largest party of the Assembly DFM: nominated by the party of the largest designation of the Assembly, after the PM's one
<b>3. Motion of no confidence</b>	
South Tyrol	Absolute majority Since 2013 constructive vote of no confidence
Northern Ireland	Parallel consent
<b>4. Dissolution of parliament</b>	
Provincial Council of Bolzano	Resignation of the absolute majority of members
Northern Ireland Assembly	2/3 vote of the Assembly; vacancy longer than 7 days of FM or DFM if no substitute is designed

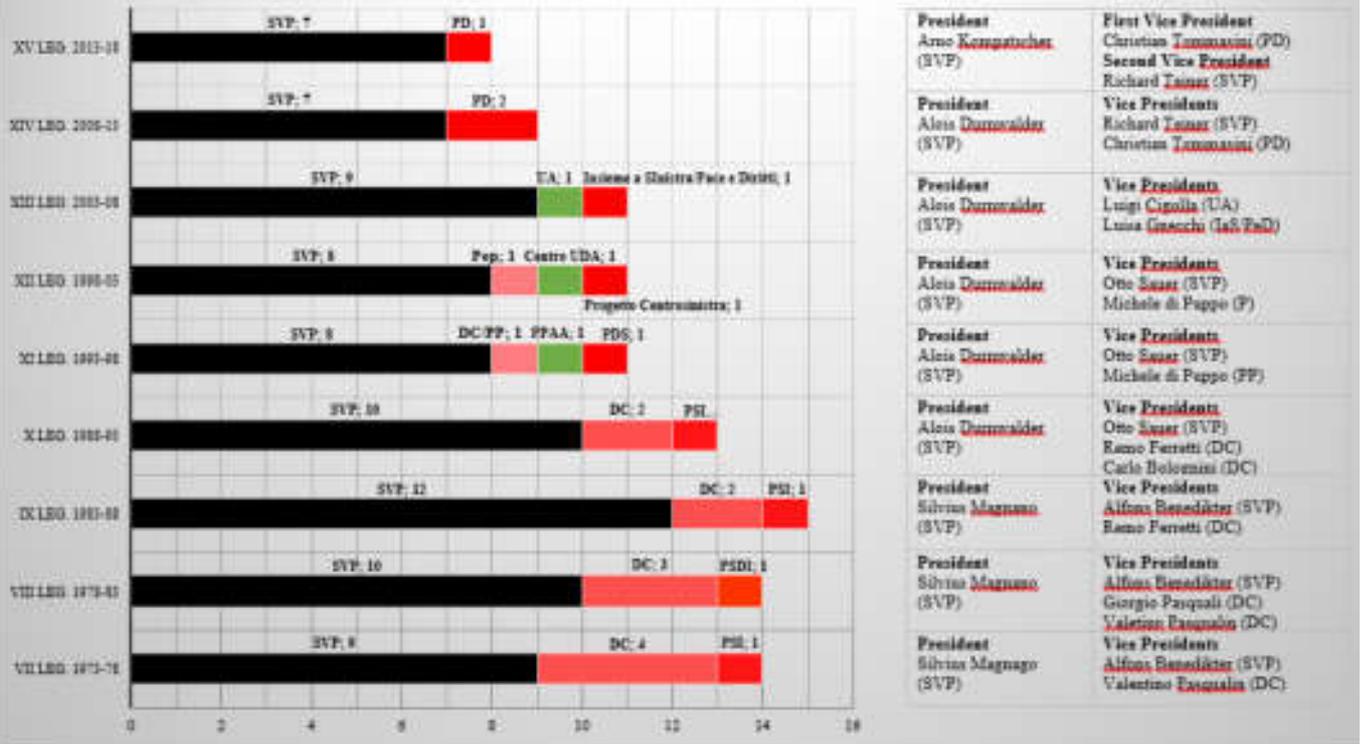
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6.5 Provincial Giunta and Presidents of South Tyrol, 1973-2013



6.6. *Abbreviations*

**Northern Ireland:** Unionist Parties: UUP, Ulster Unionist Party; DUP, Democratic Unionist Party; UKUP, United Kingdom Unionist Party; PUP, Progressive Unionist Party; TUV, Traditional Unionist Voice. Nationalist Parties: SDLP, Social Democratic Labour Party; SF, Sinn Féin. Multi-ethnic parties: NIWC, Northern Ireland Women Coalition; APNI, Alliance Party of Northern Ireland; GP, Green Party; PBP, People Before Profit.

**South Tyrol:** German Parties: SVP, Südtiroler Volkspartei; SFP, Soziale Fortschrittspartei Südtirols; SPS, Sozialdemokratische Partei Südtirols; PDU, Partei der Unabhängigen; WdH, Wahlverband des Heimatbundes; FPS, Freiheitliche Partei Südtirols; SHB, Südtiroler Heimatbund; DF, Die Freiheitlichen; UFS, Union für Südtirol; STF, Süd-Tiroler Freiheit. Ladin Parties: L, Ladins; BBLD, Bündnis BürgerUnion-Ladins Dolomites-Wir Südtiroler. Italian parties: DC, Democrazia Cristiana; DC/PP(AA), Democrazia Cristiana/Partito Popolare Alto Adige; Pop(olari)-AA, Popolari-Alto Adige Domani; Il Centro/UDA, Il Centro-Unione Democratici Alto Atesini; UC(AA), Unione Centro Alto Adige; PSI, Partito Socialista Italiano; PSDI, Partito Socialista Democratico Italiano; PCI, Partito Comunista Italiano; PDS, Partito Democratico della Sinistra; Centrosinistra, Progetto Centrosinistra; Pace e Diritti, Insieme a Sinistra-Pace e Diritti; PD, Partito Democratico; MSI/DN, Movimento Sociale-Destra Nazionale; AN(- I Liberali), Alleanza Nazionale - I Liberali; UFT, UMAI, Unitalia Movimento Alto Adige, UMIS, Unitalia Movimento Iniziativa Sociale; LN, Lega Nord; FI, Forza Italia; PDL, Popolo della Libertà; FAA-LN, Forza Alto Adige-Lega Nord; AAC, Alto Adige nel Cuore; M5S, Movimento 5 Stelle. Multi-ethnic parties: NL(NS), Neue Linke/Nuova Sinistra; ALFAS, Alternative Liste für das andere Südtirol; GAL/LVA, Grün-Alternative Liste/Lista Verde Alternativa; VGV, Verdi-Grüne-Vèrc; VS, GS, Verdi del Sudtirolo/Grüne Südtirols; VGVS, Verdi Grüne Vèrc Bürger Liste Civihe/SEL.

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**Abstract:** This paper analyses the power-sharing governments of South Tyrol and Northern Ireland. After a first theoretical part, I will focus on the government and on the President of the Autonomous Province of Bolzano/Bozen and on First and the Deputy First Ministers and the executive of Northern Ireland, describing the institutions and their historical development. The final comparative part will refer to the political context in both areas to explain the causes of power-sharing executives' (in)stability. In complex regional consociations, this is directly influenced by the nature of autonomy: where autonomy is fixed by constitutional and international norms, the executive will handle the shocks of the political system (as in South Tyrol); whereas, where autonomy can be *de iure* or *de facto* suspended and subjected to a partisan relationship with the centre (as in Northern Ireland), regional government will become instable.

**Keywords:** Northern Ireland - South Tyrol - power-sharing executive - complex regional consociation – autonomy - political stability

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