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Joanna Pfaff-Czarnecka

In Switzerland, as in most European countries, non-Christian religious communities are increasing in size. Both Swiss institutions and the public are increasingly confronted with the demands minority groups make for acknowledgement of their rights to particular cultural-religious forms and practices. Swiss institutions and the value systems they represent are thus called upon to respond to pressures which are new to them. In the process ingrained notions of justice and justification are reshaped.

The endeavours of religious minorities publicly to pursue their collective objectives have an impact on all aspects of Swiss society (the judiciary, educational, religious and civic institutions, etc.) and call into question traditional central value systems and the validity of established procedures. This project seeks both to analyse the specific forms of collective action undertaken by the members of non-Christian religious minorities and to assess how claims for collective protection are being reconciled with a Swiss legal framework that is clearly individualist in nature. It also seeks to assess how minority demands collide with the predominant value-system underlying legal norms and institutions. It is assumed that meanings are socially organised, affecting the ways in which cultural-religious values and norms are publicly displayed as well as their evolution over time.

The *dynamic* character of cultural-religious systems takes on special importance when minorities are confronted with the values and institutions of «host societies». Successful accommodation is possible only when the societal requirements which minorities encounter are considered just or legitimate. How such notions develop is one of the major questions this project seeks to answer. Several religious minorities living in Switzerland have been selected for this research project: Muslim communities, Buddhists, Sikhs and Sri Lankan Hindus. I have opted for a comparative perspective which strives to clarify why certain values and actions become relevant in particular religious communities and/or under specific circumstances.

To date, the Swiss legal-political system has successfully resisted pressures from «alien minorities» seeking to create binding legal categories which would recognise collectivities within Swiss society. Nonetheless, there is a widely perceived need to discuss the requirements for future successful accommodation. To be sure, collective rights exist in Switzerland with regard to political units, to property held by collectivities and to linguistic recognition for what Swiss citizens considered their «own» minorities, but these are not at issue here (see Wicker 1997). I concentrate upon «alien» minorities, arguing that in most cases thus far collective categories have been reconciled with the individualist legal framework. The provisional findings presented here pertain especially to one of the major dimensions of my project: the accommodation of minorities within Swiss opportunity structures (Ireland 1994).

Several preliminary remarks are in order. First, while conceptualisation of human rights, including collective minority rights, is carried out mainly at the international level, these concepts are usually too broad in scope to solve all the legal and political problems in minority accommodation at the national level. Second, I concur with Walzer's (1997) observation that international «society» lacks a common history and culture, while nation-state societies inevitably develop a «common moral standpoint», however disputed or even embattled, as a result of shared history and experience. This moral standpoint is closely related to the value systems underlying state institutions and practices; it also influences notions embraced by civil society in the formation of a domestic political culture. Thus, my comparative focus within the Swiss national context is further justified by the fact that particular solutions may or may not hold in particular domestic contexts.

A third remark concerns the inherent bias in current debates on accommodating collectivities that stems from the fact that some countries' problems and solutions have been more prominent in these debates than others'. The national models of accommodations have so far been dominated by the diverse communitarian debates surrounding the works of Canadian scholars Charles Taylor and Will Kymlicka. Middle Europe has joined these on-going debates at a later stage, providing a very different framework but one crucial to our context. In Habermas's formulation: «While modern law establishes a basis for state-sanctioned relations of intersubjective recognition, the rights derived from them protect the vulnerable integrity of legal subjects who are in every case individuals. Can a theory of rights that is so individualistically constructed deal adequately with struggles for recognition in which it is the articulation and assertion of collective identities that seems to be at stake?» (1994: 108). In Habermas' position, we can sense an uneasy acknowledgement of the existence of collective categories, along with the expectation that they are likely to pose a problem in the future. The reconciliation of collective categories within an individualist framework is envisaged through legal doctrines such as anti-discrimination law. Clearly, the individualist position strives to keep collective grievances and solutions within the private sphere and out of the public domain (see Wicker 1997). These issues are central to the four categories of demands currently put forward by religious minorities in Switzerland.

1. The first set of cases pertains to accommodating specific religious forms, such as food prescriptions and prayer, within institutional settings. These demands relate to rights to religious freedom which may collide with *organisational structures* such as the work place, schools and prisons. At issue here are the questions of flexibility of work time (e.g. during the Ramadan, pauses for prayer, holidays on ritual occasions) and special menus in the canteens. In such cases, interestingly, existing legal provisions and actual practices differ, as members of minority communities do not fully exploit existing provisions. So far, whenever new cases have arisen, the authorities have acted quickly, making possible the Friday

prayer for Muslims in prisons, for example, or providing special foods. In line with the norms of religious tolerance, such practices of accommodation take collective demands into consideration but are individually oriented.

2. The second set of issues is more complicated. Certain cultural-religious practices, such as the methods for slaughtering animals or funeral rites (the use of fabric rather than coffins) collide with *federal and/or cantonal laws*. So far, however, members of minority communities have largely accommodated binding regulations and practices. Thus, for example, Jews and Muslims import ritually acceptable meat from other countries. This causes uneasiness among many Swiss legal scientists and practitioners, but no claims have been brought before the courts by minorities in recent years. Muslims usually accept the prohibition on fabric for burying the dead and the prescription to wait 48 hours before bodies are buried. Where negotiations are under way to establish Muslim cemeteries, community leaders usually also accept the rule terminating graves after 25 years, a rule which clearly collides with the Islamic notion of eternal graves. On the other hand, Jews, who by rule must bury their dead before Saturday, normally obtain the permission to do so on the principle of religious tolerance. This group of cases thus reveals some flexibility in mutual adjustments. However, members of minority communities have so far been more flexible than their institutional counterparts, relieving authorities of the burden of providing more suitable solutions.

3. The third type of cases relates to *claims to public grounds* for the construction of religious structures such as cemeteries, temples, monasteries and mosques. The emerging issues are best demonstrated by examining the problems surrounding the establishment of a Muslim cemetery in Zurich. Currently in Switzerland, only the Muslims in Geneva have their own cemetery, although recently an agreement has been reached in Bern as well. Over 90% of all corpses are shipped to the countries of origin, placing numerous hardships upon the relatives. After initial reluctance, the Zurich municipal government accepted the argument that this situation threatened Muslim freedom of worship, and more specifically, the norm designed to ensure a dignified burial to all (see Raselli 1996). But a further problem concerned Swiss legal norms concerning death. Since 1874, public institutions are in charge of burying the dead, in order to ensure that everybody finds a place at a public cemetery, that the burials correspond to the notion of a dignified burial, and that equal treatment is guaranteed for all. But what does *equal treatment* mean? In the context of allotting burial plots, it means that graves are to follow the order of registration of the deceased, one after another, in a row. From the authorities' point of view, this procedure ensures equality. However, this notion of equality collides with the provision for religious freedom. The Muslim prescription that the dead are to face Mecca calls for a different positioning of the corpses and conflicts with the authorities' vision of how to maintain order.

When Muslim organisations turned for solutions to public institutions and the public sphere, the authorities acted quickly but the problem remains unsolved. Local institutions had first to cope with an old provision – designed to prevent Protestant discrimination against Catholics – that forbids the partitioning of cemeteries along religious lines. Consequently, the Muslim community was allotted a plot of land just next to one of Zurich's public cemeteries, on the condition that Muslim organisations pay for it. To date, Zurich Muslims have been unable to collect the necessary funds.

Several principles are in conflict here, two of which are of special interest for this inquiry. First, the minority collective demand collides not only with individualist notions but also with a notion of equality formulated in Zurich in a particular historical context (that of intra-Christian hostility and discrimination). The second issue currently emerging in the debates is the legality of granting an exception or privilege to minority collectivities by allowing them to bury their

dead in fabric. Those lawyers who endorse the special solution for Muslims seek to substantiate their case on the grounds that these provisions are necessary to protect Muslims from discrimination as individuals, not to grant privileges to collectivities.

4. The last group of cases puts individualist principles under the greatest stress because they touch on the issue of *civic duties*. To this group belongs, firstly, the requirement of wearing a helmet while riding a motorcycle. The Swiss Supreme Court has ruled that Sikhs must wear helmets, since replacing a turban with a helmet does not entail undue hardships. Another case, concerning whether a girl from a Turkish Islamic community could be excused from swimming lessons in a coeducational class, proved more complicated because it touched upon conflicting values inherent in the Constitution (gender equality vs. freedom of religion) and, also, because it touched upon norms and prescriptions within the educational system. The Supreme Court, upholding the exemption, ruled that not attending swimming lessons would not seriously affect the girl's education and represented a minor failure in the performance of her civic duties.

The tenor of this argument is pragmatic, seeking to adapt existing provisions to new circumstances within the existing body of legal doctrine. However, the pragmatic approach skirts the central issue, to wit, whether somebody *can be exempted* from performing civic duties on religious grounds. Legal scholars commenting upon this case have gone to great pains to assess the importance of swimming lessons. However, the broader implications of the problem are apparent in the fact that members of the Jewish community are exempt from attending school on Saturdays. Arguably, this practice does not fall under the rubrique of a *minor* exemption from civic duties, as many will admit in private discussions. However, clearly nobody wants to take up the case publicly for fear of revealing the inconsistencies in justifications. A frequently heard excuse for considering the two cases separately is that exempting Jews from school has so far been managed within the cantonal legal framework whereas the swimming lessons case was taken to the Supreme Court. But, clearly this does not solve the question of principle. Should this debate become public, the exemption from civic duties on religious grounds will certainly come closest to what can be understood as a collective right of «foreign minorities» in the Swiss context. It is important to note, however, that these collective rights are granted not as a form of political autonomy, but rather as exemptions meant to accommodate one particular dimension of social life for minorities (Levy 1997).

Four provisional inferences emerge from our discussion.

1. Currently there exist numerous grievances among members of religious minorities concerning their religious freedom in Switzerland, putting the Swiss principles of equality, tolerance, freedom of worship and individualism under significant stress. This short discussion of the four types of cases reveals at least two tendencies in the efforts to find solutions. On the one hand, the complexity of Swiss federalism and of the differentiated legal and institutional systems intersecting with the universalist/individualist principle seems to increase the flexibility necessary in dealing with new types of demands, but it may also temporarily postpone important debates and decisions. On the other hand, regulations impeding religious groups from carrying out important practices have a historical logic on their own: were the regulation against the division of cemeteries to be dropped, for example, no rule affirming collective rights would be necessary and Muslims using public cemeteries would simply benefit from the universal principle of tolerance.

2. The comparative perspective in this inquiry provides us with important insights. When the problems and the practices of Muslims, Buddhists and Hindus are examined together, striking similarities but also differences emerge regarding the goals and strategies of

different minority groups. One interesting convergence comes to light in examining the action of the Jewish community, which currently serves as an implicit role model. What is most striking is the *low-profile* of Jewish communities in Switzerland, their effective forms of self-organisation and especially their successful strategies for solving problems themselves, all of which tend to be replicated by other minority organisations. It is noteworthy that in view of the restrictive funding policies of public bodies, Jewish communities have so far been compelled *and* able to provide their own financial support in order to establish religious schools and cemeteries, while spokespeople of other non-Christian minorities seem to adopt this disposition towards *self-help*. Consequently, Swiss public institutions are less affected by minority demands than those in many other Western countries (especially England, Holland, Norway or Canada).

3. There is, nonetheless, a growing tendency for minority organisations to turn to public institutions in Switzerland. Religious leaders address numerous public and semi-public institutions and commissions, often appealing to courts and legislatures for the re-interpretation of existing laws and provisions. Concomitant with this evolution, the public-private dichotomy is increasingly challenged as it becomes more and more difficult to contain collective demands within the realm of the private domain. That this is a highly sensitive issue today is indicated, in the case of the Muslim cemetery in Zurich, by authorities' moves to postpone any solutions within the legislature until after the 1999-elections.

4. The support and co-operation of governmental and non-governmental organisations in other countries can have contradictory effects: either enhancing the visibility of minority demands in the public sphere or contributing to their confinement to the private domain. In Switzerland, the latter has occurred. The extensive co-operation between different organisations and interest groups appears to influence the ways minorities have so far managed to solve problems on their own. However, for minorities, there has been a price to pay: while they have assisted various Swiss interest groups in not «waking sleeping dogs», the current *leitmotiv*, they have agreed to cultural compromises which may prove troublesome in the long run.

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Author

Joanna Pfaff-Czarnecka, Ethnologisches Seminar, Universität Zürich, Freiensteinstrasse 5, CH-8032 Zürich.