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CONSOCIATION: SWITZERLAND
AND BOSNIA AND HERZEGOVINA
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Summary

Consociational democracy is often considered a possible model for Bosnia and Herzegovina. There are numerous examples of Western countries that have, allegedly, successfully implemented such a model. Yet, the key example is Switzerland. In this work, the author analyses the Swiss case, underlining its similarities, and especially its differences, with Bosnia and Herzegovina: the concept of nation, the role of languages and religions, and the principle of territory. A special attention is paid to institutions. In the text we shall see that some Swiss institutions, such as the Parliament, violate the civic-democratic principle of "one person, one vote", combining it with the territorial-federal principle which favours smaller territorial units (cantons). But this still does not mean that Switzerland is really a consociation. Contrary to the consociational model, the Swiss constitution does not institutionalise linguistic groups and their rights. The presence of linguistic groups in state institutions is ensured through informal practices and indirect institutional mechanisms. This is one of the reasons explaining why Switzerland is not a multinational state, composed of linguistically defined nations-peoples, but a civic multilingual nation-state.

Keywords: *Bosnia and Herzegovina, Switzerland, consociation, democracy, multicultural societies, nation, federalism.*

There has been lot of discussion lately about the consociation as a model for the *future* constitutional–judicial system of Bosnia and Herzegovina. Many people perceive that this is the only possible solution for Bosnia and Herzegovina (e.g., Kasapović 2005; Vlaisavljević 2005).[1] Nonetheless, others express reasonable doubts that such a model would indeed lead towards a stable and genuine democracy in Bosnia and Herzegovina (e.g., Mujkić 2006; Pobrić 2006, and Abazović 2007).

It is interesting that the present constitutional-judicial system of Bosnia and Herzegovina, in the realm of international scientific literature, is considered *a classical model*, even *the ideal model of* consociation (Bose 2002: 216, Belloni 2004: 336, Bieber 2005). It is hard to prove otherwise. Not many countries in the world follow thoroughly all the elements of the specific model (Lijphart 1977, 2004), as is the case with Bosnia and Herzegovina.[2] For instance, analysing the judicial–constitutional system of the other "divided" Balkan societies (Kosovo, Macedonia), Bieber (2005: 90-91) claims that Bosnia and Herzegovina can be characterised

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[1] See also: The conference held in August in 2006, in The "Dani" ("Days") Editorial Board (participants: Nerzuk Ćurak, Zdravko Grebo, Enver Kazaz, Ivan Lovrenović, Asim Mujkić, Senad Pećanin, Gajo Sekulić, Ugo Vlaisavljević, Ivan Vukoja) under the title of "The consociation model of a state – salvation or damnation of Bosnia and Herzegovina?", The *Status* Magazine (No. 10, Autumn, 2006, pp. 190-203.;

http://www.ceeol.com/aspx/getdocument.aspx?logid=5&id=514180E6-5EF2-48AF-8DCA-B14DCA10B99D)

[2] The two most important elements of consociation are (1) power sharing, on the governmental level, among the most important segments (linguistic, religious or other) of a pluralistic society. This principle has been consistently followed in Bosnia and Herzegovina by means of the institution of presidency and the three-national principle in terms of sharing the ministries and vice ministries in the Council of Ministers; (2) The autonomy of segments (especially on the territorial and federal basis). The division of Bosnia and Herzegovina into two entities (Republic of Srpska and the Federation of B&H) as well as the division of the Federation of B&H into 10 cantons represent the expression of such a principle. Two additional elements are: (3) The minority veto right. In The House of Peoples of Bosnia and Herzegovina, where each "constituent nation" holds the same number of seats, it is possible to block the decisions that are related to the "vital interests" of one of the peoples; (4) Proportion as a voting system and a general principle of proportional representation in terms of all the segments within the state institutions. Bosnia and Herzegovina also fulfils this criterion since its voting system is the proportional one and the implementation of "(ethno)national key" provides all the constituent peoples with proportional representation, e.g. in the state administration.

as "consociation plus" since it is not only that BH follows thoroughly all the elements of the consociation model (which is not the case with Kosovo and Macedonia), but goes even a step further (the right of veto is extremely rigid, the issue of (ethno)national key has been consistently applied in all the institutions, etc.)[3]

The authors who support the model of consociation for Bosnia and Herzegovina do not ignore the specific facts, yet they think that not many people, not even the politicians, are aware of Bosnia and Herzegovina as consociation (Vlaisavljević 2005: 122). On the other hand, those who are against such a model conceive Bosnia and Herzegovina as an "unfinished" or "disorganised" consociation (Mujkić 2006, Ibrulj 2006: 180).

For instance, the fact that the Croatian segment does not have "its own" entity, unlike the Serbian segment, but is shared with the Bosniak segment, that represents the majority in this case, is taken as a proof in defence of such a thesis (Kasapović 2005: 199).

Switzerland as a prime example

One of the important questions rising from this discussion, as Mujkić (2006) claims, is whether there is a European country founded on [consociation principles]? In this way, it is pointed out that consociation might present an interesting and attractive normative model for the democratisation of divided societies. But, it does not mean that it also represents *an empirical* model, which functions in real life.[4] If the model of consociation in Bosnia and Herzegovina is to be "fully" applied, it is important to know whether there is a country where the whole of the process has been already applied, a country that is today both stable and democratic.

Analysing the literature on application of the consociation theory, and then, political, scientific and public discussions in Bosnia and Herzegovina,

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[3] After the amendments to the constitutions of the two BH entities were passed in 2002, Bieber (2005: 90) deems that the other element of consociation – the autonomy of segments – is weakened, since the entities "formally speaking, do not give territorial autonomy to the three communities."

[4] Bogaards (2000.) criticized Lijphart's theory, particularly on this level, thinking that there is a certain confusion and inconsistency between consociation as a normative model and consociation as an empirical model.

one can come to a conclusion that there are two countries that are taken as examples of successful consociation application: Belgium and Switzerland (e.g., Lijphart 1977, Walzer 1997: 22-24).

Lijphart (1985: 89) establishes his consociation democracy on seven "primary examples", where Belgium and Switzerland play the most important role, since they still have been regarded as a result of successful consociation democracy. Some other consociation experiments have been completed (Netherlands 1917-1967, Austria 1945-1966), failed (Cyprus 1960-1963, Lebanon 1943-1975), or do not meet all the criteria of a democratic society (Malaysia since 1955.).

However, can we really think of Belgium as the *stable* model of consociation when some established Belgian political scientists (Van Parijs 2000, Deschouwer 2002.) claim that the very application of such a model contributes to a gradual *disintegration* of Belgium, since it increases the size of the centrifugal force and decreases the size of the centripetal one?

Two Belgian regions – Vallonia and Flanders – nowadays function as two autonomous states, while the third region of Brussels is becoming more and more a Capital City-District of the European Union.

"The special type of territorial and federal consociation that was applied in Belgium and that should be administered by the parties completely divided along the borderlines, does not give much hope when it comes to the issue of the system stability. Intolerance among linguistic groups could spread all around; in that case, the political system could face serious needs to negotiate for secession… The price, which is to be paid for democratic stability, is very high and such a system, in the end, does not seem to be democracy at all." (Deschouwer 2002, 83-84).[5]

It is my opinion, therefore, that if there is a country in Europe (or, in the whole world), which still can be perceived as a *stable* multicultural democracy and a *positive* example in terms of the consociation theory, then it is certainly Switzerland. Switzerland is a true test (Stojanović 2006a: 133).

This is no novelty. Even at the time when the concept of "consociation" did not exist in the political and public register of Bosnia and Herzegovina and former Yugoslavia, Switzerland often served as a proof of a stable democracy when it comes to the countries consisting of more groups or

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[5] The author's translation.

peoples. For instance, by the end of the 80's and at the beginning of the 90's, within the discussions whether Yugoslavia should remain a "federation" or become a "confederation", the advocates of the second option tended to take Switzerland as an example of a successful confederation.[6]

It is easy to recall the 1990 elections in Bosnia and Herzegovina, when the representatives of the three winning (ethno)national parties asserted their joint wish to make Bosnia and Herzegovina a "little Switzerland". All in all, if Bosnia and Herzegovina wishes to continue to follow the path of the consociation, and if, at that, Switzerland, as a prime example, proves the feasibility of the path, it is then indispensable to analyse and know better the characteristics of Swiss society and the political system of Switzerland. It is exactly the main objective of the present text. Firstly, I will present the basic characteristics of Switzerland comparing them with the conditions in Bosnia and Herzegovina. I will show that the dominant paradigms of these two countries – the concept of nation, for instance – differ significantly in such a way that it is hard to find any common trait when it comes to the comparison of Switzerland and Bosnia and Herzegovina. Then, I will turn to some (seemingly) consociational elements of Swiss institutions and suggest that Switzerland, in many ways, does not follow the path of the consociational model. In this text, I will try to learn a few lessons from the Swiss experience that might be of great use to discussions of the future judicial–constitutional system in Bosnia and Herzegovina**.**

Four languages, one nation and many "peoples"

One of the most interesting characteristics of Switzerland is that it cannot be easily categorized as a "multinational state", starting with the presupposition that its four linguistic groups make separate "nations". Although being well-known in the contemporary world literature on multicultural and/or divided societies (for instance, Kymlicka 1995),

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[6] Since 1848, Switzerland has drawn up a constitution by the name of The Federal Constitution of Swiss Confederation, which means that this country is, *de jure* and *de facto*, a federation. It has also preserved the old German name of *Eidgenossenschaft* ("oath of community") that is interpreted as "confederation" (*Confédération Suisse; Confederazione Svizzera*) in Romance languages (the Anglo-Saxon and Slavic languages as well).

such an interpretation of Switzerland is not accurate (Stojanović 2000, Grin 2002).

Starting from a historical, social, normative and judicial–constitutional point of view, Switzerland should not be regarded as a multinational state. Within the present text, it is not possible to evaluate the first three arguments, which were already evaluated elsewhere, in detail (Stojanović 2000). Instead, I will focus my attention on the analysis of the judicial-constitutional aspect.

According to The Constitution of Switzerland from 1848 (whose three major characteristics particularly interesting for us remained the same, even after the fundamental constitutional reforms in 1874 and 1999), there are two constitutional bodies in Switzerland: (1) people (*Volk/peuple/popolo*), as an assembly of all its citizens, and (2) twenty-six cantons .[7]

Does this mean that Switzerland is similar to Bosnia and Herzegovina, which is "twofold-defined", i.e. the country which is "at the same time, the state of all its free citizens and peoples enjoying equal rights" (Pejanović, 2005:248)? At first sight, one can draw such a conclusion, but the reality is quite different.

The twofold organization of Switzerland is based on a consistent implementation of the two principles. On the one hand, it is the liberal, civic-democratic principle according to which the *citizenship* or the "people" are regarded as a group of citizens which represent the cornerstone of the democratic nation-state. On the other hand, there is the territorial-federal principle according to which member states united in one joint state (federal, i.e. allied) pass on a part of its sovereignty to the specific state, yet they still preserve their own autonomy in some regions.

So, the other principle Switzerland is based on is completely different in relation to the other principle Bosnia and Herzegovina is based on. Namely, in The Constitution of Switzerland there is no mention of "(constituent) peoples" or linguistic groups/communities or "nations" regarded as national *collectives* that form a part of Switzerland .[8]

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[7] There were twenty-five cantons until 1978. The Canton of Jura was created in 1979. Its territory had been a part of the Canton of Bern since 1815.

[8] In the nineties of the 20th century the concepts such as "linguistic groups" and "linguistic minorities" entered the Constitution, but not as the collectives that form a part of Switzerland (Coray 2004).

It is important to highlight that the group of citizens-individuals constitute a part of the Swiss "people" and that term is used as a synonym for "nation". It is written in the preamble to the Constitution adopted in 1848 that the most important goals of Confederation are: "to preserve and improve the unity of the Swiss nation". The term *nation* also appears in its adjectival form used in titles of some mutual institutions in Switzerland.[9] Knowing the fact that in some other countries (Italy and Germany, for instance) the concept of "nation" implies joint linguistic and cultural and/or "ethnic" origin of the citizens (*Kulturnation*), in its political and public register, Switzerland is often referred to as a "will-based nation" (*Willensnation; nation de volonté; nazione di volontà*), thus pointing out that the Swiss form a political *nation* because they *want* to (*as long as they want to* as well) and not because they share linguistic and cultural and/or "ethnic" characteristics, i.e. the mutual origin. As a matter of fact, the obvious differences in terms of the four Swiss national and official languages (German, French, Italian and Rhaeto-Romanic) would not allow such an interpretation.

Although the term "nation" is used as a synonym for "people" on the state level, the term "people" is used on lower territorial districts level (cantons and municipalities) as well, also referring to a group of citizens. For instance, The Constitution of Canton Ticino speaks about the "Ticinian people" (*popolo ticinese),* The Constitution of the Canton of Geneva about the "Geneva people" (*peuple* genevois) respectively, and finally the Canton of Basel-City speaks about "the people of the Canton of Basel-City" (*Volk des Kantons Basel-Stadt*), referring to the citizens of the respective cantons. On the municipality level, it is also possible to

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[9] The Lower House of Parliament is called The National Council (*Nationalrat; Conseil national; Consiglio nazionale*), while the national bank is called The National Bank of Switzerland (*Schweizerische Nationalbank; Banque nationale suisse; Banca nazionale svizzera*). The name for the state roads is the National Roads *(Nationalstrassen; Routes nationales; Strade nazionali*). In some cases the adjective "national" is being used only in Italian and French, while in German the term in use is "land/filed" or "federal/allied". Therefore, the national day in French and Italian is (August, 1st) the National Day (*Fête nationale; Festa nazionale*), but in German it is the "Federal day" (*Bundesfeier*). In French and Italian, the state museum is called the "National Museum" (*Musée national; Museo nazionale*), and in German it is the "Land/Field Museum" (*Landesmuseum*), etc.

say "the people of the city of Lugano" (*popolo luganese*) or "the people of the city of Zurich" (*Stadtzürcher Volk)*.

In other words, every citizen of Switzerland is a triple citizen of: the municipality in which he/she lives, the canton in which he/she lives and finally, the citizen of Switzerland.[10] It means that he/she belongs to "the three peoples" but one nation, the Swiss one. Moving from one municipality or canton to another, the Swiss citizen automatically changes his/her affiliation to a "people", but in any case, he/she will remain a part of the Swiss people, i.e. nation. This proves once more that, in Switzerland, the concept of "people" does not carry any ethnic connotation, only the territorial-civic one.

For instance, if a person from Lausanne municipality and the Canton of Vaud moves to Frauenfeld municipality in the Canton of Turgau, he/she automatically ceases to be the citizen of (and a part of the "people" as well) the Lausanne municipality and the Canton of Vaud, and becomes (and a part of the "people" as well) the citizen of the city and canton which he/she had chosen to live in.

This is nothing unusual, since it is the case with some other democratic countries as well. Even in Bosnia and Herzegovina if a person living in Sarajevo, the *Centar* Municipality, the Sarajevo Canton and the Federation of Bosnia and Herzegovina, moves to Bijeljina, he/she will become (though not as automatically as is the case with Switzerland) the citizen of the Bijeljina Municipality in the Republic of Srpska. A great difference in comparison to Switzerland is that the specific person "carries" his/her (ethno)national identity, i.e. the affiliation to one of the three "constituent" peoples living in Bosnia and Herzegovina. This grants him/her certain rights; the rights that are, in any case, more granted to him than to any other citizen who moved from Banja Luka to Široki Brijeg and does not belong to any of the three constituent peoples.

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[10] Foreigners living in Switzerland for a certain number of years can become Swiss citizens only after a multi-level procedure. Primarily, they have to obtain provisional citizenship of the municipality they are living in, then the same citizenship from the cantonal government, and finally from the federal level. When the cantonal government grants the request, the person instantly becomes a citizen of the specific canton, thereby automatically obtaining the citizenship of the municipality he/she is living in, Switzerland as well.

This is not the case with a person from Switzerland, for, moving from Lausanne, where French is the only official language, to Frauenfeld, where German is the only official language, he/she will undoubtedly "bring along" his/her *own identity* (therefore, French as his/her mother tongue), but this will not grant him/her some particular rights in the Canton of Turgau.

The cause of such a situation is tightly related to the implementation of the so-called "territorial principle", which is one of the most significant Swiss characteristics worth being evaluated further.

Territorial principles: advantages and disadvantages

The application of the territorial principle traces its origins back to religious intolerance, skirmishes, even wars that were waged in the Western Europe after the Reformation. In Switzerland, four wars had been waged between Protestants and Catholics from the 16th until the 18th century, and even the last one that took place on the Swiss territory – the Sonderbund war in 1847[11] – carried clear religious connotations. In order to minimise the risk of religious wars, the state-cantons, already in 1531, applied the rigid territorial principle that would later – The Peace of Augsburg (1555) and The Vestfal Congress (1648) – become a rule in whole of the Western Europe. Also known under its Latin title *cuius regio eius religio,* The Peace of Augsburg demanded a one-to-one correspondence between a political district and religious community. In other words, Catholics could not live on Protestants' territory, and vice versa.[12] Exceptions, though with many difficulties, were possible only for members of other religions (especially Jews).

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[11] The civil war between the alliance of seven Catholic–conservative cantons (Sonderbund) and the other remaining cantons (whereby liberals were in power, mostly Protestant, but in some cases Catholics as well) lasted more than twenty days and inflicted around one hundred and fifty human casualties. One of the important reasons for this war was a rejection of Catholic conservatives to transform the confederational Switzerland into federation. The defeat of the Catholic cantons caused the Constitution from 1848 to be passed, thereby building up a new federal state which is still existent.

[12] It is interesting to point out that at that time, and up to the second half of the 19th century, the linguistic differences were not politically relevant, and as such they were not the cause of skirmishes in Switzerland.

What did this basically mean? The one who was a Protestant on the "Catholic land" could choose whether to convert to Catholicism, immigrate to "Protestant lands" or die. Nowadays we can say that the application of this principle was a sort of "ethnic cleansing".[13]

Therefore, we should not be surprised that during the creation process of modern Switzerland as a federal state in 1848, most of the cantons (20 out of 25) were homogenous in terms of religion.[14]

It is only that The Constitution of 1848 gave absolute rights to live and move freely, and the cantonal laws that banned mixed marriages were gradually abolished.[15]

So, it is evident that such an application of the territorial principle cannot be accepted nowadays if we defend the principles of liberal democracy and if we strongly object to "ethnic cleansing".

It is interesting in this context to point out something that, at first sight, might appear as a paradox. Namely, if, on the one hand, the application of territorial principles to *religious* groups is unacceptable, the application of the very principle to *linguistic* groups, on the other, has had a few positive effects from the perspective of liberal democracy. Namely, owing to the strong federal state organization, certain regions that are tightly related to the issue of language remained under the cantonal jurisdiction. In favour of this fact, it is enough to point out that each canton enjoys an almost complete autonomy in the field of education and that there are, *de jure*, 26 different educational systems (though they, *de facto*, approach to each other and try to co-ordinate their education syllabuses and calendars).

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[13] But at that time, there was another way of solving the "problem" of religious plurality: the *milet* system of religious autonomy in the Ottoman Empire. From the modern point of view, as Kymlicka points out, it is a system that was, in relation to *cuius regio eius religio*, "generally humane, tolerant towards group differences and amazingly stable". Of course, such a system cannot be acceptable according to the modern standards of democracy, since it was not the only "liberal society", but "deeply conservative and a patriarchal one", contrary to the ideals of individual freedom (Kymlicka, 1995: 157).

[14] According to the 1837 census, eleven cantons had over 90% of Catholic population (seven cantons had even 100% of Catholic population), while nine cantons consisted of over 85% of Catholic population (and four cantons had over 98% of Catholics).

[15] The Jews would, only in 1866, become equal citizens of Switzerland.

What does this actually mean? In the Canton of Ticino (Tessine), where more than 84 % of the Italian-speaking Swiss[16] are concentrated, who on the state level represent only 4.3 %, all the formal education is exclusively provided in Italian. The same goes for cantonal laws, institution and street names, arbitration in cantonal courts, etc., which have been exclusively written in Italian. If a family whose mother tongue is German moves from Zurich to Ticino (Tessine), the children will have to attend school in Italian and go through the same integration process in the same way as children of immigrants from Spain, Turkey or Bosnia and Herzegovina. The parents will have to find someone who could translate a child allowance form from German into Italian, and in case of any arbitration the verdict will be exclusively rendered in Italian.[17]

The fact that the Swiss whose mother tongue is German represent the absolute majority (72.5%) is of no use for them on the state level. The German-speaking "immigrants" who moved to Ticino have made several attempts, especially in the 90's of the 20th century, to provide formal education in German for their children, or to have court verdicts written in German. Their attempts were explained as "freedom to choose language" that was guaranteed by the Constitution. All these requests were always rejected, even by The Federal Court with a simple explanation: it is prohibited by the territorial principle; the freedom to choose language is related to one's private sphere of life, not when in contact with municipalities or cantonal institutions.

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[16] According to the 2000 Census

[17] One should be careful when it comes to implementing this example to the Bosnian/BH reality. The fact that three official languages in BH belong (at least) to the same language family, which is not the case with the four Swiss languages, does not, according to my opinion, entitle a clerk working in the Bijeljina Municipality to reject a similar request/plea of an X citizen because it is written in the Bosnian language. Likewise, an X citizen should not demand from the Bijeljina Municipality to receive an answer in his/her own language (in writing as well). Namely, *impartially* speaking, it goes without saying that all the citizens of Bosnia and Herzegovina understand all the three languages and that they can read both alphabets. The question still remains – taking into consideration the segmentation of education system and syllabus in the post-Dayton Bosnia and Herzegovina – whether, *impartially* speaking, a clerk from Široki Brijeg would be able to read a request/plea written in the Cyrillic alphabet in twenty or thirty years.

Such a strict application of the territorial principle in terms of language was, here and there, disputed – especially in the places along the borders, for instance in the bilingual Canton of Fribourg (Fribourg/Freiburg). Despite that, the paradox lies in the fact that it prevents linguistic groups from assimilating into ethnic ones, thus preserving the liberal-civic principles of the state organisation. Let us take as an example an Italian-speaking Swiss who moved from The Canton of Ticino to The Canton of Geneva where the official language is French. We have already explained why he/she automatically becomes the citizen of Geneva. But there is more to come. For him/her, it is enough to learn the official language of the Canton, without an accent if possible (which can be a hard task but, also, not an impossible one[18]), and he/she will be regarded as a proper citizen of Geneva and "Romande", i.e. a French-speaking Swiss. In the Canton of Ticino, nowadays it is easy to find people whose surnames are typically German, such as Ritter, Müller or Weber; who would never declare themselves as the German-speaking Swiss (they often cannot speak German). In the German and French-speaking areas, it is possible to find some people with surnames, such as Bernasconi, Sciarini or Cavadini. Although it is clear that these surnames originate from Ticino, they often have not got anything to do with this place.

Bicameral parliament: the protection of minorities?

I will try to provide a vivid illustration of the double principle application – the civic-democratic principle and the territorial-federal one – taking, for example, the Parliament, the most important institutional body of every state.

The Swiss Parliament, i.e. The Federal Assembly, is made up of two councils:

The National Council (*Nationalrat*; *Conseil national*; *Consiglio nazionale*) represents, as its name tells, The Swiss Nation, i.e. all its citizens in terms of the civic-democratic principle "one person, one vote". It consists

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[18] It is certainly more difficult for adults to learn how to speak a foreign language without an accent, unlike for children who learn new languages and new accents without any difficulty.

of 200 representatives elected in 26 electoral districts (which correspond to the cantons) mainly by proportional representation system.[19]

The Upper House of the Assembly, The Council of States or Cantons (*Ständerat/Conseil des Etas/Consiglio degli Stati*) represents the cantons and it consists of 46 councillors.[20] All the cantons are equally represented according to the territorial-federal principle "one canton, two councillors", regardless of the geographic and democratic factors.[21] The fact that both Councils exercise almost the same legal and constitutional jurisdiction provides evidence that both the principles enjoy the same status within the legislative procedure. Such an impeccable example of symmetric bicameralism can be found only in Italy and the USA.[22]

The fact that the territorial-federal principle in The Council of Cantons ensures more than a proportional representation for smaller cantons respects *at first sight* the consociational model, which indeed looks positively at a *more-than-proportional* representation of the *minorities* in mutual institutions (Lijphart 2004 : 103). This is clearly evident in The House of Peoples of Bosnia and Herzegovina in which all the three "constituent peoples" share the same number of representatives (five).

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[19] The six members of the National Council are being elected according to the majority system in electoral districts (cantons) that according to the number of population are entitled to have only one seat. Besides, 68 representatives are being elected in electoral districts with less than nine representatives per district (*low district magnitude*). Lijphart (1999:152) does not recommend this kind of electoral districts for pluralistic societies, since they create particularly *non-proportional* results despite a formal PR voting system.

[20] The three cantons are divided into two half-cantons respectively. Each half-canton is entitled to have one seat in the Council of Cantons.

[21] The creators of the Swiss Constitution from 1848 explicitly referred to the American model when they decided to divide the parliament into two houses. Namely, the House of Representatives in the USA represents the citizens, while each American state has two representatives in the Senate.

[22] The two Councils meet together in the Joint Assembly that has been predicted by the Constitution on rare, but not unimportant occasions, where decisions are brought by simple majority. In such circumstances, we can speak of asymmetrical bicameralism, since the Council of States has less importance in relation to the National Council (46 out of 246 representatives altogether). For instance, the elections of the seven-member Federal Government and the election of Federal Judges of the Supreme Court are being held in the Joint Assembly.

It means that a constituent people, fewer in number, is more than proportionally represented to the prejudice of a far more numerous one.

In The Council of Cantons of Switzerland, The Canton of Uri, which has about 35 000 inhabitants, holds the same number of seats as the Canton of Zurich that has a population of 1.2 million. Roughly speaking, every Uri inhabitant "stands for" 36 inhabitants of the Canton of Zurich![23] Regardless of the fact that Swiss political scientists (e.g., Papadopoulos 2003) in the past several years have tended to stress the need to change such a system, since it reflects social and political differences from the middle of the 19th, and not at the beginning of the 21st century. At the same time, many others developed various alternative models. Despite this, no parliament structure reforms were introduced, for such reforms would demand changes in The Constitution.

Namely, every change of the Constitution is subject to an obligatory referendum that demands double majority: not only that a simple majority vote is required (50% +1), but also the majority of cantons must give their consent (i.e. simple majority gained in 13.5 cantons out of 26). This indirectly gives the right of veto to the smaller cantons, thus disabling any reform of the Council of Cantons. In case that the referendum on the structure reform of the Council of Cantons is held, it would mean again that a vote of one citizen of the Canton of Uri stands for 36 votes in Zurich (when it comes to the counting of most of the cantons). Why would the citizens of the Canton of Uri voluntarily change such a system, thus losing their power within a new one? Though the larger cantons could theoretically outvote the smaller ones in case of a referendum on structure reform of the Council of Cantons, the probability for this to happen is very low, since in *all* the cantons there are strong political streams that oppose it whether for the doctrinal reasons (conservative parties are against almost every institutional reforms), or some interests of political parties (two out four political parties that are present in all the cantons have a better status in The Council of Canton than in The National Council). We should not be surprised by the fact that a serious reform of The Council of Cantons has never been announced, i.e. no reform has ever been reached. There were

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[23] The Canton of Uri has 35 083 inhabitants (whereas 32 149 are the Swiss citizens), and the Canton of Zurich has 1 255 645 inhabitants (whereas 1 004 516 are the Swiss citizens). /Data from 2004/

several cases in which certain members of The National Council tried to propose reforms, but they did not succeed in doing it. Therefore, we can say that the Swiss institutional system has been "frozen" by The Constitution from 1848. In a way, it is the price to be paid for the Swiss federalism.

In the same way, this is a proof that the Swiss system justifies a great violation of civic-democratic principle of equality of all the citizens ("one person, one vote") in order to fully respect the principle of equality of all the constituent state-cantons.

Protection of the Catholic minority

It is interesting to point out the main reason for which the creators of the Swiss Constitution justified such a violation to the benefit of the other principle. Namely, if they had specified only one council in the Parliament according to the principle "one person, one vote", as it had been proposed by a certain number of members of the Commission on the Constitution from 1848, it would have meant that Protestants would gain majority in the Parliament, i.e. theoretically, they could have always outvoted the representatives of the Catholic minority.[24] Frankly speaking, this is what certain politicians/Protestants and/or liberals wished for. Nonetheless, the opinion that stability of a young Swiss state should be built on integration, but not on isolation of Catholics, pervaded in the end though the Catholic cantons lost the Sonderbund war in 1847.

With the creation of the Council of the Cantons – and at the same time the introduction to the rules of "double majority" in terms of a referendum on the Constitution changes – this problem seemed to be evaded, since most of the cantons, as we have seen in the first part of the text, were homogenous at that time and since Catholics were grouped in those cantons that had

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[24] In the 19th century, the proportion between Protestants and Catholics was 6 to 4. Nowadays (thanks to the immigration from mostly Catholic countries such as Italy, Spain and Portugal, to the secularisation as well), Switzerland is more populated by Catholics than Protestants. It is important to point out that the concept of "Catholic" signifies *political* Catholicism, i.e. Catholic–conservatives who fought against the federal state, thereby defending the sovereignty of cantons. There were Catholic–liberals who fought for secular federal state demanding complete separation of church and state. They shared political agendas of Protestants–liberals on many issues, and were far from Catholics–conservatives. For instance, one of the seven councillors of the first Federal Government from 1848 – Stefano Franscini – was a Catholic – liberal.

not been so populated. Therefore, it is clear that the territorial-federal principle – "one canton, two representatives" – in the Council of Cantons was at an advantage of Catholics since it indirectly guaranteed more-than-reciprocal representation or, even theoretically, a simple majority in this chamber of the Parliament. Besides, Catholics exercised power in "their own" cantons, thanks to the federal and decentralised state organization.

How to evade institutionalization of religious groups?

It is important to point out that the Constitution from 1848 contains no article on special privileges or guaranteed rights for Christians as a "people", "group", "community" or any other kind of *collective* that has certain rights; not only in terms of the Parliament, but also in terms of the government and the state administration overall.

An interesting lesson can be drawn from this example.

Nowadays the differences between Protestants and Catholics in Switzerland show no political and/or social cleavage. Not even regular political observers of Swiss politics, let alone "ordinary" citizens, who neither know something about politics nor are interested in it, can tell how many seats Catholics or Protestants have in the Parliament, the government or the state administration. My thesis is that the depolitisation of religious differences within Swiss society and politics would not have been possible/feasible if Catholics and Protestants, as groups sharing explicit rights and guarantees, had entered the Constitution from 1848, i.e. the depolitisation would not be feasible if Switzerland had formally declared itself a state of "equal citizens" and "peoples of equal [religiously defined] rights", as is the case with Bosnia and Herzegovina. The important institutions and constitutional principles of Switzerland – for instance, the Council Cantons; the "double majority" rule when it comes to the obligatory referendums, great political autonomy of the cantons – undoubtedly contributed to the integration of the Catholic minority into the federal state after 1848, thereby ensuring pacification and stability of Swiss democracy. At the same time, the non-formalisation of Catholics and Protestants as judicial–constitutional categories contributed to the fact that religious differences today are not relevant any more neither in politics nor in the society and do not represent a factor that divides either Swiss citizens or the society as a whole.

At the same time, this example still shows that it is not desirable to completely ignore the factors, which in certain historical periods separate a multicultural society. It also shows that, in the states based on liberal and civic-democratic principles, it is possible to give certain guarantees within mutual institutions to minorities, thereby facilitating the process of establishing democracy.

But these guarantees do not have to (my opinion is that they *should not* as well) be explicit, formal and direct. It is desirable to aspire to flexible solutions, which *in implicit, informal and indirect way* protect minorities without violating the basic liberal principles according to which a democratic state does not need to give certain rights to collectives/groups *as such*, but only to individuals-citizens (Stojanović: 2006b).

And then when Switzerland – so as many other federal states (the USA, Canada, Belgium, Brazil, Russia, etc.) – violates this principle by giving certain rights to its territorial and federal districts, we should not forget that each of these districts has been organised according to civic-democratic principles, and not according to religious and/or (ethno)national ones.

Is Switzerland really a linguistic consociation?

Now it is necessary to look back at my comment according to which the division of the Swiss Parliament into two chambers respects "at first sight" the principle of consociation. Why is that so?

Simply for the reason that Lijphart, as the majority of contemporary scientific works, does not consider Switzerland an example of *religious* consociation (as was the case with the Netherlands, for instance) but an example of *linguistic* consociation (Lijphart 2002). This certainly does not surprise the reader of these lines since Switzerland, not even within Bosnian discussions about consociation, has not been regarded as a country of a religious pluralism, but as a country of the linguistic one.

Has the model of consociation really been implemented when it comes to the linguistic groups in Switzerland? I suggest that we go back to the example of the bicameral parliament. There is no doubt that the National Council does not comply with the model of consociation since the "one person, one vote" principle automatically means that the German-speaking Swiss hold an absolute majority, while the linguistic minorities: the French-, the Italian-, and the Rhaeto-Romance-speaking Swiss – do not have any guarantee that they will not be constantly outvoted.

What is the situation like in the Council of Cantons? Chart 1 is showing that the linguistic groups are even here proportionally represented according to their share in the Swiss population.[25] It means that the Council of Cantons does not give any guarantee to the linguistic minorities that they will be outvoted; neither do they have a right to veto. In other words, the Swiss Parliament has not been respecting the model of consociation when it comes to the linguistic minorities.

Language	Percentage among population	The National Council	The Council of Cantons
German	73,1	71,4	72,2
French	20,5	23,2	21,7
Italian	4,3	4,1	4,3
Rhaeto-Romance	0,7	1,4	1,7

Source: Stojanović (2006a: 136, 138).
Annotation: The share of linguistic groups in population is related only to the Swiss citizens without taking into account the languages of foreign citizens living in Switzerland (20.7% inhabitants in 2005). The percentages represent average values according to the 1980, 1990 and 2000 censuses. The linguistic structure of the bicameral parliament refers to the period between 1970 and 2007.

The model of consociation has not even been fully respected in the Federal Assembly. It is true that "the Grand Coalition", which consists of the four major parties, has been occasionally in power since 1943, and constantly since 1959. This reflects the *consociational* way of playing politics. But it, *per se*, does not mean that this is the model of *consociation,* simply for the reason that these four parties do not represent the parties of linguistic segments or communities, but the parties of different ideological and political views (leftist/rightists, liberals/conservatives, pro-Europeans/

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[25] It was not an expression of explicit will of the Commission on Constitution from 1848; it was a result of coincidence and historical circumstances. For instance, if the Ticino territory (320 000 Italian-speaking inhabitants) had been divided into three cantons, as is the case with the central Switzerland which divided into three cantons – Uri, Schwyz and Unterwalden – and has 244 000 German-speaking inhabitants, the Italian-speaking Swiss would have had six instead of two representatives in the Council of Cantons.

nationalists, etc.) [26] Namely, these parties are represented in almost every canton and it means that their composition is multi-linguistic in character. In the political register of Bosnia and Herzegovina, these parties would not be regarded as (ethno)nationalistic, but rather "civic" or "multi-ethnic" ones.

And of course, when it comes to the election of the seven members in the Federal Government – which are elected by the Parliament one at a time – the mother tongue of a candidate is one of the key factors. Canton/region, sex, age, party membership, political experience are also important. Therefore, in the Constitution and the Swiss laws there is no formal (*de jure*) obligation upon the Government to be balanced in terms of languages.[27] Thus, there is no formal "(ethno)national" key as is the case with Belgium according to whose Constitution the Government should consists of 50% of Walloons and 50% of Flemings. However, in unofficial (de facto) practice, two or three members of the Swiss Government out of seven are French or Italian-speaking. Starting from 1848 up to the present, The Swiss Government never consisted of German speaking councillors. There were always councillors from the French-speaking (24.5%) and very often from the Italian-speaking (6.8%) areas. Only one councillor, between 1913 and 1920, was from the Rhaeto-Romance languages group (0.6%).[28]

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[26] The differences between consensus and consociational models of democracy are being evaluated by Lijphart (1989).

[27] There was a rule until 1999 that one canton could not render more than one councillor. This was also an expression of territorial-federal principle according to which they wanted to evade dominance of the three largest cantons, the cantons of Zurich, Bern and Vaud, in the Federal Government. This (formal) rule was replaced through the 1999 referendum by a recommendation, which was formal, but not compulsory for the parliament, according to which "the representation of all linguistic and geographical regions" should be "taken into consideration". This could be a sign that even Switzerland has recently headed toward consociation, but it is still too early to draw conclusions about this issue. It is enough to mention that between 1999 and 2007, i.e. after passing a new bill that would meet the criteria for forming a government, the Parliament did not choose Italian-speaking candidates, regardless of the lack of councillors belonging to this linguistic group after 1999.

[28] This percentage represents average values calculated based on linguistic structures of the Federal government every January in the period between 1847 and 2007. In the course of 84 years, there were no representatives from Italian-speaking areas.

Let us look back for a while and see the other elements of consociational model from the point of view of the role that linguistic groups play in Switzerland.

Linguistic groups have no right to veto whatsoever. This is, besides, closely related to the fact that linguistic groups as such are not judicial-constitutional subjects.

The principle of proportional representation of linguistic groups is informally used in the state (federal) administration. Although a formal "linguistic key" does not exist, the government on many occasions gave instructions to the federal ministries according to which the balance of the languages should be "taken into consideration". Statistic data shows that this principle has been intently followed, though the organizations such as "Helvetia Latina", which in Bern represents the interests of the "*romande*" Switzerland (i.e. the Swiss areas that are covered by all the languages except German), regularly complain that the lack of French and Italian-speaking Swiss holding the administrative posts is evident.

When it comes to proportional representation as a voting system, contrary to what is given in the contemporary scientific works, Switzerland cannot be put together with the countries that apply only the proportional voting system. The Upper House of the Parliament is being elected by the majority system, and by 1919 the Lower House was being elected in the same way. This did not affect the proportional representation of linguistic groups since they are grouped in certain regions of Switzerland (territorial concentration). In these cases, it is enough to divide the country into more electoral districts and the linguistic groups will be automatically represented in the National Council in proportion to its number (Stojanović, 2006a : 134).

To sum up*,* the only element of consociational model for which we can say that it is applied regarding the linguistic groups in Switzerland is territorial autonomy. The attention on the analysis is necessary even here, for twenty-six cantons were not, historically speaking, created to "protect" linguistic minorities. If this was the case, Switzerland would not have consisted of one trilingual and three bilingual cantons. Impartially speaking, the only example that partially supports the thesis of Switzerland as consociation is the secession of the north Jura (French-speaking area) from the Canton of Bern (over 90% of German-speaking population), i.e. the creation of the Canton of Jura. One should be very careful and should

not draw conclusions too fast, since this case shows an outstanding complexity of the Swiss cultural plurality. Namely, although the majority of the northern Jura population accepted the secession from Bern, most of their "compatriots" from the southern Jura objected to it and still live as a linguistic minority in the Canton of Bern. One of the reasons lies in the fact that Protestants are the majority in the southern Jura, in contrast to the northern Jura, which is mainly Catholic. Therefore, the religion brings the people of the southern Jura together with the German-speaking citizens from the Canton of Bern who are also Protestants (*crosscutting cleavages*).

	Switzerland	Bosnia and Herzegovina
Concept of nation	Civic	Religious, ethno-national
Number of nations	One (Swiss)	Three (Bosniaks, Serbs, Croats)
Situation/state in relation to the nations of neighbouring countries.	Exclusive (e.g., all the Italian-speaking citizens do not declare themselves as "Italians", i.e. as a part of the people of the neighbouring country, but rather as the "Italian-speaking Swiss").	Inclusive (e.g., many Croats and Serbs from BH declare themselves, or they have been regarded as such, as a part of Croatian and Serbian nation respectively and whose "motherlands" are Croatia and Serbia; many Bosniaks from Sandžak declare themselves, or they have been regarded as such, as a part of the Bosniak nation and they see Bosnia and Herzegovina as their motherland).
Languages	Four *de jure* and four *de facto* different official languages.	One *de facto* and three *de jure* languages.
Religions (historically)	Protestants, Catholics, Jews, etc.	Muslims, the Orthodox, Catholics, Jews, etc.
Executive power	The Federal Government is the seven-member executive council. The linguistic representation has not been guaranteed by the Constitution. Each year, one of the seven Councillors is elected by the Federal Assembly as President of the Confederation.	The national key (1/1/1) in the Presidency. The Council of Ministers consists of 1/3 ministers from The Republic of Srpska and 2/3 ministers from the Federation of B&H. Each minister has got two vice ministers belonging to other peoples.
Parliament	Bicameralism. The Council of Cantons consists of the same number of representatives. The linguistic groups (by accident!) are represented in proportion to their numerical size.	Bicameralism. Each constituent people in the House of People has got the same number of representatives. It means that the people, fewer in number, is more than proportionally represented.

State Administration	There is no formal linguistic key, but the proportional representation of the majorities tends to be respected.	National key as a general principle.
Minority Veto	No.	Yes, when it comes to the "vital interests" of one of the peoples.
Territorial autonomy	Twenty-six cantons.	Two entities (The Republic of Srpska and the Federation of B& H). The Federation of B& H has been divided into 10 cantons, plus The Brčko District.
Party system	Ideological (right wing/left wing, liberals-conservatives, etc.). All the major parties are multi-linguistic.	(Ethno)national parties and multinational parties.
Voting system	Proportional representation in the Council of Nation; the majority system in the Council of States.	Proportional representation.

Conclusion

"In 1978, when drawing up a new constitution the Nigerians followed the example of the USA Constitution. Yet, many other countries tried to be more like Switzerland and not Nigeria, although their problems were more similar to the Nigerian than to the Swiss ones" (Horowitz 2002: 31).

I deem that this comment of Horwitz is justified. Chart 2 is clearly showing that the differences between Bosnia and Herzegovina and Switzerland are essential, particularly when it comes to their relationship to the ethno-national paradigm. However, it does not mean that it is impossible to use the experiences of these countries in terms of facing religious and/or linguistic differences that divide their societies. Such a comparison is all the more so interesting because both Switzerland and Bosnia and Herzegovina are being constantly mentioned within the discussions (not only in B&H) on the consociational model of democracy, which, according to Lajphart, represent the only hope for "deeply divided societies".

In the text, one can come to the following conclusions:

1. The present judicial-constitutional system of B&H respects almost all the elements of the model of consociation. Therefore, it is hard to present arguments for the belief that problems in B&H could be resolved by introducing a higher level of consociation.

2. Switzerland is the example of a stable and democratic country, regardless of linguistic and religious pluralism. However, Switzerland does not follow the consociational principles in many ways. This is why Switzerland should not be considered a fine example of consociation.

3. However, it is possible to learn several lessons from the example of Switzerland:
  - To evade institutionalization of collective identities. The example of Swiss Catholics, who did not enter the Constitution as a collective, contributed to the fact that religious differences do not divide the Swiss society nowadays.
  - To foresee indirect and informal guarantees for the national minorities, instead of formal and rigid mechanisms for the protection of minorities.

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