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Collective minority rights in Switzerland

A reply to Ellen Hertz's comment

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I thank Ellen Hertz for her detailed and thoughtful comments on my research outline. These critical remarks are especially welcome because they give me the opportunity to exchange my views with another expert working in a related field. Furthermore, Hertz's critique compels me to make my position more explicit, and to clarify some statements which apparently have been misunderstood. Let me stress that Hertz bases her comments on a very short text of mine. Consequently, some of her positions I share, but did not have the space to make this clear in the original article. For instance, I could not agree more with her that non-Christian minorities are currently engaged as actors within the Swiss public sphere. However, my interpretation of the reasons for this phenomenon differs significantly from Hertz's, as will be demonstrated below. I also agree that immigrant communities need to be studied in the context of a Swiss institutional framework that basically endorses the universalist-individualist mode of incorporation but nevertheless leaves some scope for collective provisions for its «own» communities. My remark that collective solutions for Switzerland's «own» minorities are not an issue here was misleading; I meant that this was not an issue within the short text Hertz is commenting on. Furthermore, I am amazed that my text could be read as conceiving of the Swiss legal system as static and unchanging; to the contrary, I discuss several examples of important adaptations to non-Christian minorities' objectives.

On other topics we clearly disagree. It is true that I may essentialize (apparently one of the greatest anthropological crimes these days) the difference between Switzerland's «own» (e.g. *suisse-romands*) and «alien» collectivities (e.g. people of Hindu faith). Obviously, such distinctions are continually interpreted anew. Sigi Feigel's book on his experiences as a Swiss Jew has a telling title *Schweizer auf Bewährung* («A Swiss under Probation»). Another example are the many Tamils living in Switzerland, who have rather quickly been adopted as «our own minority» – for the time being. I am well aware, of course, that this kind of dichotomy is ideological, but ideologies play an extremely crucial role in wide-spread discourses «othering» people of different faiths. Even if «alien» minorities form part of the Swiss public sphere, they nevertheless tend

to be considered outside the «Swiss» order. I see little advantage in insisting that «the demands for collective protection which "alien" minorities formulate are necessarily "Swiss" in character». Somehow, Hertz seems to fall victim here to Nader's «harmony ideology». That more and more members of non-Christian religious minorities enter the public sphere is a crucial indicator of their increasing integration into the Swiss society. But what is most fascinating here is that the Swiss public sphere is faced with demands to live forms of life which formerly have been considered incompatible with Swiss ways. Being able to address Swiss institutions does not necessarily render a demand «Swiss». The best example of these persisting tensions is the Supreme Court's ruling that a teacher is not allowed to wear a scarf while teaching at a state school.

Asking for collective provisions may not be a new element in the negotiations over accommodative practices. However, the religious forms which are at stake continue to polarise the «Swiss» public. Here, Hertz fails to distinguish between various kinds of collective provisions. It is one thing to enjoy collective provisions on the ground of territoriality (like the French-speaking cantons), and another to ask for collective mechanisms that exempt persons from performing civic duties (such as attending classes on Saturdays, or participating in swimming lessons). To be sure, I am not arguing against exempting children from attending classes for important religious reasons. What I am suggesting is that the Supreme Court's decision to exempt a Muslim girl from swimming lessons on the ground that this represents a minor failure to perform a civic duty is inadequately argued when we consider Jewish children who are allowed, through cantonal regulations, to stay away from school during the Sabbath – an exemption that can hardly be called «minor». Here, I see a flaw in the mode of justification, and I wonder, at the same time, how the Court's ruling exempting the girl from swimming lessons could be formulated in such a way that the universalist-individualist framework need not be abandoned.

Having said that, I reach the most crucial point of disagreement I have with Hertz's position. If I understand her correctly, Hertz argues for introducing new types of collective provisions for religious minorities, on the grounds that Swiss minorities enjoy such provisions. I argue, to the contrary, that the Swiss legal framework can rely on a long (and dynamic) tradition endorsing the universalist-individualist principle, which is capable of incorporating – very successfully, I would say – many of the «alien» minorities' objectives into its framework. Admittedly, this tradition grew out of Christian cultural forms, which make up part of the background upon which the national and cantonal institutional settings have developed. Rather than dehistoricise this complex legal-political evolution by advocating collective provisions, which may be successful in other national contexts (like Canada, or to some extent, England), I take the normative stand (unusual among anthropologists, I guess) of contributing with my study to designing policies aimed at endorsing the universalist-individualist framework. For, in the Swiss context, this framework is most suited to enabling members of immigrant communities to live their own lives oriented to their own religions – in the ways that any individual being deems appropriate.