

ПРИЛОЗИ УЗ ИЗДВОЈЕНО МИШЉЕЊЕ ПРОФ. ДР ТАНАСИЈА МАРИНКОВИЋА

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Правног факултета Универзитета у Београду да донесе одлуку
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Federalism and Regionalism in Western Europe

A Comparative and Thematic Analysis

Wilfried Swenden



neka obeležja koja su svojstvena federacijama, pojedine osobine konfederacija, ali i neke elemente međunarodnih organizacija.

Evropska unija, dakle, ima veliki broj obeležja konfederacije i federacije, ali je ipak bliža savezu država nego saveznoj državi. U najkraćem, Evropska unija je „novi oblik federalnog modela kakav nikada nije viđen.“¹⁰⁶ U prilog tome govori mnoštvo stavova iskazanih u savremenoj ustavnopravnoj teoriji. Vilfrid Svenden, koji je izvršio izuzetno sveobuhvatnu analizu pravne prirode Evropske unije, zaključio je da „EU nije federacija, ali je već sada više od konfederacije.“¹⁰⁷ Slično zaključuje i Majkl Burdžis kada kaže da je EU „nekonfederalna unija.“¹⁰⁸ Prema njegovim rečima, „donedavno je bilo moguće opisati EU kao klasičan primer federalizma bez federacije“, a to je „značilo da je u njenom poretku, formiranju i kasnijem razvoju, kao i u njenom institucionalnom okviru i širenju politike uvek bila rizična federalnih ideja, uticaja i strategija, bez transformisanja u formalnu federaciju.“¹⁰⁹ Alek Stoun Svit (*Alec Stone Sweet*) i Vejn Sendholc (*Wayne Sandholtz*) zaključili su da je Evropska unija „transformisana iz ugovorenog sporazuma između nacionalnih država, u kvazifederalnu zajednicu.“¹¹⁰ dok su *Lizbet Hug (Liesbet Hooghe)* i *Gerit Marks (Gary Marks)*, povedeni odfecima konfederalnih karakteristika Evropske unije, utvrdili da u okviru EU „nacionalne vladе u državama članicama imaju veće mogućnosti za samoodređenje nego konstitutive jedinice u bilo kojoj postojećoj federalnoj državi, dok teritorijalne jedinice u okviru federalnog režima imaju tendenciju da ka sličnim unutrašnjim političkim sistemima, domaći politički sistemi zemalja članica (Evropske unije, M. S.) variraju u velikoj meri.“¹¹¹ Končno, prema mišljenju Palerna i Keslera, danas „u mnogim aspektima Evropska unija funkcioniše kao federacija“,¹¹² ali „treba, međutim, naglasiti prisustvo federalnih elemenata, koji u celini podsećaju na konfederaciju, i činjenicu da ne deluje da ovaj proces vodi ka potpuno razvijenoj federaciji, potvrđujući pretpostavku da je vreme nastanka federacija putem agregacije prošlo.“¹¹³ Među domaćim autorima, Slobodan Orlović je zaključio da Evropska unija „nije država (...),

¹⁰⁶ *Ibid.*

¹⁰⁷ W. Svenden (2006), 13.

¹⁰⁸ M. Burgess, 265.

¹⁰⁹ *Ibid.*, 226.

¹¹⁰ Alec Stone Sweet, Wayne Sandholtz, „Integration, Supranational Governance and the Institutionalization of the European Polity“, *European Integration and Supranational Governance* (eds. W. Sandholtz and A. Stone Sweet), Oxford 1998, 1.

¹¹¹ Liesbet Hooghe, Gary Marks, *Multi-Level Governance and European Integration*, Lanham 2001, 37. Oni su pokušali da razviju koncept „vlasti na više nivoa“ (*multilevel governance – MLG*), koji obuhvata svaku vrstu političkog sistema koji predviđa više teritorijalnih nivoa vlasti, pa se u njega, prema njihovom mišljenju, uklapa i Evropska unija, ali i sve federalno uređene države. Postavlja se, ipak, pitanje kakva je stvarna teorijska vrednost tako široko postavljenog koncepta.

¹¹² E. Palermo, K. Kössler, 64.

¹¹³ *Ibid.*

with respectively weak or no regional tiers of government at all (Loughlin 2001).

3. Multilevel governance

In the previous section, I identified three major groups of states on the basis of the institutional strength of the regions therein: federal states, regionalized states and unitary decentralized states. Some may dispute the criteria that were used to delineate these categories, but at least readers should know what distinguishes them. The absence of clear, universally agreed cut-off points, in particular between regionalized and unitary decentralized states, is due to the frequent understanding of regionalism as a *continuum* and not as a taxonomy. In this regard the more recently developed term of multilevel governance (MLG) can be used as an umbrella concept in which all forms of decentralization find their place.

Two of the authors who popularized the term, Liesbet Hooghe and Gary Marks, defined MLG as the ‘dispersion of authoritative decision-making across multiple territorial levels’ (Hooghe and Marks 2001: xi). Initially, the concept of MLG was developed to provide a better understanding of the EU, a political system which until the 1990s was primarily interpreted through the contrasting lenses of intergovernmentalism and (neo-)functionalism (Rosamond 2000). MLG provided a middle way between both theories. It acknowledges the central position of national governments in European integration, but also argues that ‘authority and policy-making are shared across multiple levels of government – subnational, national and supranational’ (Hooghe and Marks 2001: 2). Collective European decision-making has weakened individual state autonomy, because some decisions no longer prescribe unanimity voting but nonetheless enforce common rules across the EU. Furthermore, MLG theorists make a strong claim that subnational interests are not necessarily mediated through national governments, but may find direct access to the European policy arena. Based on their analysis in *Multi-Level Governance and European Integration*, Liesbet Hooghe and Gary Marks seem to distinguish MLG from a federal stateformat. They point at the lack of a formalized supreme constitutional framework which specifies the legal ends (central competencies) of integration, and the absence of EU statehood warranting the legitimate use of violence. Echoing the confederal traits of the EU, they argue that ‘national governments in the member-states have greater powers of self-determination than constituent units in any existing federal state, and while the territorial units within a federal regime tend to have similar subnational political systems, the domestic political systems of the member states vary greatly’ (Hooghe and Marks 2001: 37). However, in their more recent work, Hooghe and Marks have broadened the concept of MLG to include *any* type of political system that provides for multiple territorial tiers of government (Hooghe and Marks 2003).

dozvoljeno da stranke različitih jezičkih grupa formiraju predizborne koalicije, bez obzira na to što imaju istu ideologiju, jer svaki birač mora da naznači kojoj jezičkoj zajednici pripada i može da glasa samo za stranke koje predstavljaju njegovu jezičku zajednicu. Svenden tvrdi da „antagonizam između holandskih i francuskih jezičkih grupa nije tako visok da bi se sprečilo formiranje dvojezičnih ili bikomunalnih izbornih lista, kada bi stranke imale dozvolu da ih formiraju.“⁴¹⁹ Dokaz za svoju tvrdnju taj autor nalazi upravo na području britisčkog regiona, gde je na opštinskim izborima u svih 19 opština koje ulaze u sastav tog regiona moguće formirati saveze između flamskih i frankofonskih stranaka, koje stranke sa zajedničkim ideologijama (socijaldemokrate, zeleni, liberali) često i formiraju, pa takve koalicije čine oko jedne trećine ukupnog broja lista koje učestvuju na izborima.⁴²⁰

Švajcarska pruža dobar primer primene konsocijativnih mehanizama. Švajcarsko stanovništvo je podeljeno po dva glavna osnova – jezikom i konfesionom, pa tako postoje tri velike jezičke i dve velike verske zajednice. Konsocijativnost se ogleda u sastavu federalne egzekutive, koju biraju domovi federalne skupštine. U sastav sedmočlanog Saveznog saveta uvek ulaze predstavnici najvećih političkih stranaka (tzv. velika koalicija), a najmanje dva pripadnika francuske jezičke i jedan pripadnik italijanske zajednice. Švajcarska „magična formula“ obezbeđuje dobru jezičku i versku predstavljenost, a Svet odlučuje konsenzusom, pa nema mogućnosti da se povrede interesi bilo koje zajednice. Nasuprot belgijskom modelu, ne postoje striktno ustavne norme kojima bi se zahtevala primena „magične formule“, odnosno obaveza stvaranja velike koalicije, ali se takva pravila primenjuju dovoljno dugo da se može sa sigurnošću reći da imaju snagu ustavne konvencije. U praksi, veliki švajcarski kantoni (Kakvi su, recimo, Cirih i Bern) uvek imaju predstavnike, dok se predstavnici malih kantona smenjuju u sastavu Saveta.

Osim toga, u švajcarskom ustavnom sistemu postoje i odredbe o zastupljenosti sva tri jezika u sastavu Saveznog suda, u sastavu federalne administracije (mada ne postoje tačno određene kvote kao u Belgiji), u vojsci itd. U federalnom parlamentu ne postoji formalna podela na jezičke grupe, ali je iskustvo pokazalo da u sastav gornjeg doma, koji broji 46 članova, po pravilu ulazi 12 do 13 poslanika koji ne pripadaju nemačkoj jezičkoj zajednici, što je manje od 30 odsto.⁴²¹ Osim toga, najmanje osam kantona može da pokrene postupak donošenja federalnog zakona, mada ukupan broj kantona u kojem većinu čine francuska i italijanska jezička zajednica ne dostiže taj broj.

Konačno, Švajcarska Konfederacija je čuvena po širokoj primeni referenduma, na kojem se, osim većine glasova, zahteva i većina u više od polovine kantona. To je tzv. sistem dvostruke većine, uveden još 1848. godine. Treba, ipak, naglasiti i da su kantoni u kojima većinu ne čine pripadnici nemačke

⁴¹⁹ W. Svenden (2006), 284.

⁴²⁰ *Ibid.*

⁴²¹ Kenneth Douglas McKee, *Conflict and Compromise in Multilingual Societies: Switzerland* (Waterloo 1983, 126-127).

Regions) or the interests of the German-speaking Community into account. For instance, although a certain number of Dutch- and French-speaking senators should have their residence in the Brussels Capital Region, there is no specific guarantee that secures the *direct* input of the Regions in the Belgian centre. The Regions are nonetheless indirectly represented, as a result of the strong congruence between Community and Regional borders. Similarly, granting a federal veto power to the extremely small German-speaking Community which just represents 70,000 inhabitants would be driving the *consociational* logic too far.

I have discussed the Belgian federal *consociational* mechanisms extensively in Chapters 3 (courts), 5 and 6. I should add here that apart from operating in the legislative, executive and judicial arenas, these mechanisms also affect the working of the civil service, diplomatic corps and army. Federal civil servants are divided into two language groups. The share of Dutch- and French-speakers roughly corresponds to their respective shares in the Belgian population as a whole. Yet, 20 per cent of the higher-ranking federal civil servant positions are set aside for so-called bilinguals. Half of the bilinguals are native Dutch-speakers who must have passed a rigorous French-language exam, the other half are native French-speakers who passed an equally difficult Dutch-language test (Brans and Hondeghem 1999). The linguistic composition of the federal diplomatic corps corresponds to the demographic strength of the linguistic communities, although all diplomats must display fluency in the other national language. With regard to the top diplomatic functions (Ambassadorships), linguistic parity is the rule. Similar rules apply to the army.

Next to Belgium, Switzerland is a strong living example of a *consociational* federation. As in Belgium, the regions cannot be identified as the main *consociational* segments of Swiss society. Rather, the Swiss segments are the three official language groups or the two major religions. Switzerland's linguistic and religious diversity is reflected in the composition of its federal executive. Elected by a joint session of both federal parliamentary chambers, it has been composed as a Grand Coalition in which at least two French-speakers and one Italian-speaker assume a seat. From 1959 until 2003, the 'magic formula' resulted in the presence of two Radicals (Liberals), two Social Democrats, two Christian Democrats (Catholics) and one representative from the Farmers' Party. Since these parties have strongholds among different language and religious groups, the magic formula produces linguistic and religious diversity. The executive decides by consensus. Therefore, no decisions are taken that encroach upon the specific interests of the linguistic or religious minority groups. Unlike in Belgium, the presence of Grand Coalitions is not constitutionally required, but could be suspended or altered at any time. For instance, the number of delegates from the Swiss People's Party in the federal executive was increased after the 2003 federal elections to take account of that party's rapid electoral growth.

jezičke zajednice često bili na strani gubitnika na referendumima u Švajcarskoj, naročito kada se odlučivalo o pitanjima od suštinskog strateškog značaja za tu zemlju. Dobar primer takvog slučaja je referendum o pristupanju Evropskom ekonomskom prostoru (*European Economic Area*) održan 1994. godine, koji je mogao da predstavlja presudan korak u pristupanju Švajcarske Evropskoj uniji. Tesna većina od 50,3%, odnosno 19 kantona, odbila je takvu mogućnost uprkos tome što je oko dve trećine frankofonih Švajcaraca glasalo za pristupanje. Ipak, federalne vlasti su zbog bojazni od stvaranja podela po jezičkoj osnovi pokrenule značajne infrastrukturne projekte u nerazvijenim područjima i, s druge strane, sa Evropskom unijom postigle dogovor o nešto restriktivnijoj formi ekonomske saradnje, koji je kasnije i potvrđen na referendumu održanom 2000. godine.⁴²² To je upravo dokaz da švajcarska politička elita vodi računa o heterogenosti svog društva, što dovodi do spredele, da prihvataju zahteve drugih društvenih grupa, da se angažuju na aktivnostima koje vode pomirenju i da pronalaze politička rešenja koja ublažavaju nezadovoljstva.⁴²³

Nasuprot Belgiji i Švajcarskoj, u Španiji ne postoje konsocijativni mehanizmi, pa tzv. istorijske autonomne zajednice (Katalonija, Baskija, Galicija) ne uživaju posebnu zaštitu u centralnim državnim organima. To je, nažalost, logična posledica fikcije o jedinstvenoj španskoj naciji koju sadrži španski Ustav od 1978. godine (čl. 2).

d) *Teorijski stavovi o primeni liberalnog nacionalizma i konsocijativne demokracije u višenacionalnim federacijama.* Postavke o liberalnom nacionalizmu i konsocijativnoj demokraciji kao rešenju za probleme u višenacionalnim federacijama nailaze na različite odjeke u nauci, a sva shvatanja se uglavnom mogu podeliti u tri grupe.⁴²⁴ Prva grupa autora smatra da su ti koncepti primenljivi u svim državama, čak i onima u kojima nije do kraja sproveden proces demokratizacije. Druga grupa pisaca tvrdi da liberalni nacionalizam ne može biti osnova sistematske teorije federalizma u podeljenim društvima i umesto toga predlaže različite pristupe koji su fokusirani na izgradnji države, demokratizaciji i jačanju nacionalnog identiteta u višenacionalnim državama. Treća grupa autora uglavnom negira primenljivost federalizma u višenacionalnim društvima uopšte i umesto toga zagovara jake unitarne države ili stvaranje više država, otvoreno podržavajući mogućnost secesije. Samim tim, oni negiraju i liberalni nacionalizam i konsocijativnu demokraciju kao mehanizme za postizanje ekvilibrijuma u takvim federacijama. Dakle, dok prve dve grupe autora zadržavaju koncept višenacionalnog federalizma, pri čemu druga grupa vodi u pitanje njegovu zasnovanost na vrednostima liberalnog nacionalizma,

⁴²² Vid. W. Swenden (2006), 262.

⁴²³ André Buchtiger, Jürg Steiner, „Switzerland: Territorial Cleavage Management“, *Federalism and Territorial Cleavages* (eds. U. M. Amoretti, N. Bermeo), Baltimore 2004, 47.

⁴²⁴ *Ibid.*, 40.

Yet, some federal *consociational* mechanisms are constitutionally anchored. For instance, the federal executive cannot comprise more than one member from the same canton. In practice, the smaller cantons rotate in claiming an executive seat, whereas the large and powerful cantons (Zurich, Vaud and Bern) are almost always represented (Wälti 1996: 12). As we have seen, the constitution also specifies that the members of the Swiss Federal Tribunal, or highest federal court, should represent all three language communities. Sufficient representation of the French- and Italian-speakers is also aimed at in the federal civil service, although there is no fixed quota system as in Belgium. For instance, the French have been somewhat overrepresented in the federal Ministry of Foreign Affairs, whereas the contingent of German-speakers is above average in the Chancellery, Military, Interior and Justice Departments. The federal parliament is not organized in language groups, and the representation of the various languages is roughly in proportion to their demographic weight. This applies even to the second chamber which has two members per canton (or only one in the case of two half-cantons). Usually the non-German-speakers make up to 12 or 13 out of 46 delegates (McRae 1983: 126–7).

Many analysts of Swiss politics argue that the referendum has operated as a *consociational* device par excellence. Although essentially an instrument of majoritarianism, it can protect the voice of the regions because in the Swiss context *constitutional* referendums never work as a simple majority device. Such referendums require the consent of a majority of the cantons alongside a popular majority. Alternatively, a group of a minimum of eight cantons can trigger a referendum after a federal bill that is not already subject to a mandatory referendum has been passed by parliament. Although it has been used only once, a threat to activate a cantonal referendum may force the centre into policy concessions. This said, the French- and Italian-speaking cantons taken together do not reach a quorum of eight.

The view that the constitutional referendum could help to protect the interests of the minority language or religious groups does not often hold. Arguably, several outcomes have run against the voting patterns of the smaller French or Italian cantons or the minority Catholic group in the Swiss federation. Instead, the constitutional referendum seems more often to protect the interests of the small, rural and predominantly German-speaking cantons (Vatter and Sager 1996). When first introduced in 1848, the double-majority requirement was meant to protect the interests of the eight *Sonderbund* cantons. Demographic changes since have made the double-majority requirement into an instrument of limited protective value for the French- or Italian-speaking minorities. Since 1848, the population of Geneva has multiplied by seven, but the population size of the smallest canton of Appenzell-Innerboden has remained almost constant. Thus far, eight proposals have failed because they lacked a cantonal majority, in spite of a demographic majority in their favour. On those questions, the French- and

Italian-speaking cantons were usually on the losing end (hence, they favoured the change; Vatter and Sager 1996: 179).

A well-known example of a referendum in which the French- and Italian-speakers voted differently from a state-wide and cantonal majority is the 1994 referendum which sought to obtain Switzerland's entry into the European Economic Area (EEA). Entering the EEA was perceived as a stepping stone to potential Swiss membership of the European Union. The proposal was rejected by 50.3 per cent of the Swiss people and by 19 Swiss cantons.⁴ Yet, roughly 56 per cent of the German-speaking Swiss voted against joining the EEA whereas more than two-thirds of the French-speakers endorsed the treaty. The referendum coincided with an economic crisis, which hit the urban centres of French-speaking Switzerland and the Ticino hardest. Therefore, the federal government was afraid that linguistic tensions between the language groups might exacerbate as a result. It set up information campaigns to reduce prejudices against the other linguistic communities. Simultaneously it increased the infrastructural aid to the economically deprived areas. It also negotiated a new bilateral treaty with the EU, proposing a more restricted form of economic cooperation than the EEA. The proposal passed by referendum in 2000. Bächtiger and Steiner see this as evidence of the commitment of the Swiss political elites to maintain a multicultural political order, leading to a willingness – especially among German-speaking elites – to contain growing divisions, to be receptive to the claims of other cleavage groups, to engage in conciliatory activities, and to find policy solutions that alleviate grievances' (Bächtiger and Steiner 2004: 47).

In contrast with Belgium and Switzerland, the Spanish centre lacks any *consociational* features. Although the regions have gained substantial self-rule, the composition of the national executive, the Senate, Constitutional Court and civil service does not systematically protect the interests of the historic Communities, let alone of all the 17 regions. Rather, the influence of the regions in the centre has been linked with the latter's requirement to take on board the views of some ethno-regionalist parties for securing a central parliamentary majority.

Finally, despite the fact that Scotland and Wales represent a low share of the British population, some provisions have sought to voice the interests of the UK regions in the centre. In contrast with Spain, the British government accommodated Scottish and Welsh interests even before devolution was implemented. Suffice to recall the role of the Scottish and Welsh Office and the Secretaries of State for Scotland, Wales and Northern Ireland with cabinet status. However, in practice, cabinet and party pressures limited the autonomy of the Scottish caucus and secretary to issues of relatively low political salience, such as local government, education and social work. Health, economic development and the budgetary priorities remained under strong central control (Keating 2004: 160–3). As a result of devolution, the

nju nacionalno homogenih federalnih jedinica u višenacionalnoj federaciji. Umesto toga, Horovic se zalaže za stvaranje multinacionalnih regiona koji će poboljšati saradnju između različitih nacionalnih grupa. Horovicov integrativni koncept dodatno je ojačan preferencijalnim izbornim sistemom, koji bi favorizovao umerene kandidate i zahteva da predstavnici različitih nacionalnih grupa dobiju podršku predstavnika drugih grupa kako bi bili izabrani na javnu funkciju.⁴³⁸ Ukratko, Horovic tvrdi da institucionalni okvir višenacionalne države ne bi trebalo da pojačava dalje razdvajanje već treba da poboljša i favorizuje saradnju između različitih nacionalnih grupa.⁴³⁹ Taj autor navodi nekoliko slabih tačaka konsocijativnih mehanizama.⁴⁴⁰ Pre svega, konsocijativni pristup podrazumeva „državništvo“ (*statemanship*), odnosno volju političkih predstavnika većinske zajednice (ili nacije), i na centralnom i na regionalnom nivou, da efektivno deli političku vlast sa predstavnicima manjinskih zajednica (nacija). Pritom, politički predstavnici većinske zajednice često nisu skloni da se prilagođavaju konsocijativnim mehanizmima, naročito kad pripadnici te grupe nemaju takvih sklonosti. Zatim, kompromisi koji se postižu u okviru organa u kojima funkcionišu konsocijativni mehanizmi mogu skupo koštati političke predstavnike većine jer opozicija može kritika-ma vlasti, a naročito kampanjom u kojoj nudi manje pomirljivu politiku, da pridobije veliki broj birača. Konačno, konsocijativni pristup prinuduje na podelu političke vlasti nakon izbora, ali postojanje nacionalnih stranaka ili proporcionalni izborni sistem ne podstiču saradnju u predizbornoj arani. Zato „postoji značajna razlika između ponašanja partija u federalnoj predizbornoj kampanji i njihovog ponašanja u pregovorima o koaliciji“.⁴⁴¹ Stoga postoja-nje federalnih političkih stranaka koje ne zastupaju interese neke od grupa već se rukovode opštim interesima može biti od presudnog značaja. Drugim rečima, za stabilan federalni aranžman treba da postoji „integrativna“ partija, odnosno „partija u kojoj političari na jednom nivou vlasti imaju organizaci-oni odnos sa političarima na drugim nivoima, kao i sa političarima na svom nivou“.⁴⁴² Takve partije po pravilu imaju stav da je korist svakog federalnog subjekta približno jednake važnosti, pa stoga „preferiraju pravilne raspodele koristi“.⁴⁴³ Razume se, integrativne partije se ne pojavljuju niotkuda niti su njihovo osnivanje i uspešno delovanje mogući u svakoj višenacionalnoj za-jednici. U Belgiji se, smatra Horovic, čini logičnijim i lakšim potpuno ukida-nje federalnih izbora i izbor federalnog parlamenta na regionalnim izborima nego navođenje jezičkih partija da ponovo udruže snage. Stvaranje dvojjezič-

⁴³⁸ Donald L. Horowitz, *Ethnic Groups in Conflict*, 2nd ed., Los Angeles 2000, 682-683.
⁴³⁹ S. Keil, 43.

⁴⁴⁰ Donald L. Horowitz, „Constitutional Design: Proposals versus Processes“, *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (ed. A. Reynolds), Oxford 2002, 20-23.

⁴⁴¹ W. Swenden (2006), 285.

⁴⁴² M. Filippov, P. C. Ordeshook, O. Shvetsova, 188.

⁴⁴³ *Ibid.*, 190.

A stronger economic South would deprive the Flemish nationalists of much of their ammunition, but it would also reduce the political costs of a further growing apart. Furthermore, the effects of *consociationalism* are fully experienced in the federal and Brussels' arenas, where Flemish and French-speaking parties are condemned to cooperate. They are at best played out indirectly in the other regions, as no cross-Community cooperation is required in the post-electoral phase.

Consociationalism is not without its weaknesses. One element of criticism refers to the freezing of segments or political groups beyond a level that the members of these groups are willing to support. A good case in point is the procedure which underpins the election of the parliament of the Brussels Capital Region. Unlike the rest of Belgium, French- and Dutch-speaking parties are on offer. However, the institutional rules prohibit parties from one language group from forming an electoral cartel with an ideologically related party from the other language group. Voters must first indicate whether they wish to vote for a party of the Dutch- or a French-speaking language group before they can vote for a party or party candidate of their preference within that group. Candidates must profess their loyalty to a party which belongs to either language group. The Flemish parties are guaranteed a fixed number of seats in the regional parliament. Although they protect the Dutch-speakers against underrepresentation, these electoral rules also preclude the formation of bilingual electoral lists. One could make a case that the antagonism between the Dutch- and French-speakers is not high enough to prevent the formation of bilingual or bicomunal lists, should parties be allowed to create them. Proof for this can be found in the *municipal* elections which take place every six years in each of the 19 municipalities that compound the Brussels Capital Region. At this level, *consociational* power-sharing mechanisms are weakly developed and bilingual party cartels are allowed to form (Swenden and Brans forthcoming). Generally, *bilingual* lists represent about a third of all party lists. Flemish parties are almost as likely to team up with French-speaking parties with a similar ideology (Social Democrats, Greens, Liberals ...) than to join Flemish parties of a different ideology (Deschouwer and Buelens 1997).¹⁰ However, proponents of the *consociational* mechanisms at the level of the Brussels Capital Region argue that *without* such guarantees at the regional level, fewer bilingual electoral alliances would have emerged at the local level also.

In a more extensive critique on *consociationalism* Donald Horowitz put forward some additional weaknesses. First, *consociational* approaches assume a level of statesmanship, that is, a willingness among majority leaders in the centre and the regions to share political power. That willingness does not easily correspond with political realities in the field. Put differently, even if the Basque Country had adapted a *consociational* framework, it may have fallen apart (cf. also the break-down of the power-sharing mechanism in Northern Ireland). Second, *ethnic group* leaders who play a lead role in

ni stranaka u toj državi nije opcija jer postoji netrpeljivost između grupa, kao i zbog interesa postojećih stranačkih elita.⁴⁴⁴

e) *Rezime*. Iako na prvi pogled deluje da liberalni nacionalizam i konsocijativna demokratija u višenacionalnim društvima mogu dobro da funkcionisu u okvirima federalnog državnog uređenja, to je moguće samo u određenim uslovima. Zbog toga nije sasvim nesporno da je federalna država po sebi rešenje za višenacionalne zajednice. Jer donošenjem federalnog ustava neće se istog momenta „roditi“ i demokratska politička kultura, koja je preduslov za liberalni nacionalizam i konsocijativizam i koja podrazumeva poštovanje i razumevanje između društvenih grupa, podsticanje duha tolerancije, spremnost na kompromis i konsenzus i sl. Stvaranje demokratske političke kulture je dugotrajan proces, koji može potrajati nekoliko decenija, pa čak i nekoliko vekova, a stvaranje duha tolerancije i spremnosti na kompromis veoma je teško ostvariti u postkonfliktnim društvima. Stoga uspostavljanje federalnog državnog uređenja nije „čarobni štapić“ koji će učiniti da sukobljene društvene grupe momentalno počnu da žive u slozi. Ono može samo da bude dobar temelj za postepeni razvoj takvih društava u kojem će se postepeno razvijati i demokratska politička kultura, a zajedno s njom i tolerancija i međusobno poštovanje među narodima.

6. Kanada, Indija, Španija i Belgija – primeri uspešnih višenacionalnih federacija? Danas se u literaturi o federalnoj državi najčešće navode tri primera uspešnih višenacionalnih federacija: Kanada (nastala 1867), Indija (1950) i Belgija (konačno usvojila federalno uređenje 1994. godine). Trima federacijama trebalo bi pridodati i Španiju, bez obzira na to što ona u svom Ustavu od 1978. godine nije izricito definisana ni kao federalna ni kao višenacionalna država, pošto u suštini jeste i jedno i drugo.

Dobro je primećeno da se „izraz ‘nacija’ upotrebljava s nelagodnošću u Kanadi, Švajcarskoj i Belgiji, gde se pod njega obično podvodi politička nacionalnost“, koja je „širok instrumentalni pojam koji se koristi za opisivanje nečega što je u suštini politički, a ne kulturni identitet“.⁴⁴⁵ S druge strane, španski Ustav počiva na fikciji o jedinstvenoj španskoj naciji. U Španiji se pravi razlika između pojnova „nacija“ i „nacionalnost“ i smatra se da „jedinstvena španska nacija“ uključuje različite „nacionalnosti“ i „regione“ (čl. 2 Ustava). Među 17 autonomnih zajednica, osam se smatra „nacionalnostima“, sedam „regionima“, a dve „zajednicama“.

Od te četiri države, samo je jedna, Indija, i formalno i suštinski višenacionalna, dve su dvojine ili bipolarne (Kanada i Belgija), a u jednoj (Španija), uprkos značajnoj i očiglednoj nacionalnoj heterogenosti, postoji ustavna fikcija o jednonacionalnosti. S druge strane, dve vanevropske federacije sa ve-

⁴⁴⁴ „Iako je Belgija federacija sa tri regiona i zajednice, u pogledu partijskih sistema to je dvojna federacija. Francuski i flamanski partijski sistem postoje jedan pored drugog“ (W. Swenden, 2006, 170).

⁴⁴⁵ M. Burgess, 103.

consociational conflict management are not necessarily more inclined to accommodative behaviour than the members of their group. Third, compromises are not without cost. Opposition is likely to arise from within the ethnic groups, leading to open challenges of group leadership and the emergence of new ethnic parties which propose less accommodative policies. Finally, *consociationalism* requires power-sharing after the elections, but the presence of group-based parties or a proportional electoral system do nothing to encourage such behaviour in the pre-electoral arena (Horowitz 2002: 20–3). As was noted in the Belgian example, there is a considerable difference between the behaviour of parties in the federal election campaign and their behaviour in coalition-negotiations afterwards. Thus far, antagonism between French- and Dutch-speaking parties has not prevented the formation of federal coalition governments. However, voters would be treated more honestly had these incentives to inter-group cooperation been present in the campaign itself. Instead, the general climate in the election is one of mutual avoidance or accusation, rather than of bargaining and reconciliation. Such incentives to intergroup cooperation can only come from two directions.

Either, *state-wide parties* must be at hand. The state-wide party may remind the regional party wings not to exaggerate the autonomy claims which they are allowed to make in regional elections. What is needed for a federal, stable arrangement is an ‘integrated’ party, that is, ‘a party in which politicians at one level of government bear an organizational relationship to politicians at other levels as well as to politicians within their level’ (Filippov, Ordeshook and Shvetsova 2004: 188). Such parties consider the benefit of each federal subject of roughly equal importance, and therefore ‘prefer more equitable allocations of benefits’ (Filippov, Ordeshook and Shvetsova 2004: 190).

As Filippov et al. acknowledge integrated parties do not come out of the blue. They are themselves the product of design, ‘the design of institutions that compel politicians to erect parties of a particular sort because that sort and not some other serves their interests’. In Belgium, it seems more logical and easier to abolish federal elections and to make the composition of the federal parliament dependent upon regional elections than to persuade the linguistically split parties to join forces again (Maddens 2004). The formation of bilingual parties is not really an option when inter-group antagonism runs high or the interests of ruling party leaders are undermined.

When party leaders are not inclined to forge direct organizational links with representatives from the other language, religious or ethnic group, such linkages may nonetheless emerge from *incentives in the electoral system* (Horowitz 2000). To that purpose, the electoral system should allow for ‘vote pooling arrangements’ (Horowitz 2002: 23). Whereas a *consociational* approach forces elites into accommodative behaviour after the elections, a vote-pooling approach forces elites into such types of behaviour before the elections (Reilly 2001: 11). To that purpose Horowitz suggests the introduction of

inženjeringa, da određene zajednice dobiju odgovarajući broj garantovanih predstavnika, njegovi su efekti u zakonodavstvu retko pozitivni i uglavnom predstavljaju stalni izvor trvenja i nezadovoljstva. Na kraju, treba naglasiti da ne mora da znači da će rešenje koje se pokazalo efikasnim u jednoj višenacionalnoj federaciji dati iste rezultate u drugoj – najčešće je neophodno da svaka od njih pronađe sopstveni model mehanizama za prevenciju konflikata.

e) *Stranački (partijski) sistem*. Vilijam Riker je tvrdio da se federalizam može meriti merenjem stranaka⁶²⁰ i da je ⁶²⁰struktura stranaka, dakle, surrogat za strukturu celog ustava⁶²⁰ ipak, kako navodi Svenden, „međusobni uticaj između partijskog ili izbornog sistema i federalizma je nedovoljno istražena oblast u komparativnoj nauci o federalizmu“.⁶²¹ U suštini, veoma je značajno da li u federaciji deluju partije koje su integrativne i teže podšci celokupnog stanovništva ili su partije vezane za različite narode i federalne jedinice. U višenacionalnim federacijama najznačajnije partije koje ne deluju na celoj državnoj teritoriji su one „koje daju prioritet zahtevu za povećanje regionalnih ovlašćenja ili autonomije nad bilo kojim drugim pitanjem“, a „uporedna literatura ih određuje kao etnoregionalističke partije (*ethno-regionalist parties*)“.⁶²²

Prave etnoregionalističke partije su one čiji je primarni, a nerekto i jedini cilj borba za što veću regionalnu autonomiju, naročito u slučajevima kada reprezentuju etničke grupe koje nemaju svoju matičnu državu (*„stateless nations“*). Takve političke stranke klasifikovao je Ferdinand Meler Romel (*Ferdinand Miller-Rommel*), razvrstavajući ih u četiri grupe: separatiste (*separatists*), levoliberalne federaliste (*left-libertarian federalists*), autonomiste (*autonomists*) i protekcioniste (*protectionists*).⁶²³ Separatisti su, razume se, najradikalniji tip etnoregionalističkih partija, koje ni po koju cenu ne odustaju od svojih zahteva za oцепljenjem od postojeće države i formiranjem suverene nacionalne države, čak ni po cenu članstva u Evropskoj uniji. Predstavnik te grupe stranka bila je, recimo, Baskijska separatistička partija (zabranjena 2003), koja je negovala veze sa baskijskom terorističkom organizacijom ETA. Druga grupa, levoliberalni federalisti, karakteristični su samo za evropski kontinent. Oni teže ka visokom stepenu decentralizacije, uz značajnu regionalnu samostalnost u tenije povezanoj Evropskoj uniji. Takve stranke su, na primer, Baskijska partija solidarnosti (*Eusko Alkartasuna – EA*) ili katalonska Republikanska levica (*Esquerra Republicana de Catalunya*). Cilj autonomista, kao treće grupe etnoregionalističkih partija, jeste da ostvare regionalnu autonomiju u okviru federalnog državnog uređenja, uz očuvanje svojih istorijskih teritorija i jezičke i kulturne posebnosti. Predstavnici te grupe su katalonska Konvergencija

620 William H. Riker, „Federalism“, *Handbook of Political Science – Volume 5 – Governmental Institutions and Processes* (eds. F. I. Greenstein, N. W. Polsky), Reading 1975, 137.

621 W. Svenden (2006), 141.

622 *Ibid.*, 146.

623 Ferdinand Müller-Rommel, „Ethno-regionalist Parties in Western Europe: Empirical Evidence and Theoretical Considerations“, *Non-State Wide Parties in Europe* (eds. D. L. Selzer, J. L. Newell, R. Mannheimers, L. De Winter), Barcelona 1994, 183.

5 The Centre, the Regions and the Party System

1. Introduction

In the previous chapters, I explained how competencies are assigned or policed in a federal state and how this assignment is influenced by conflicting goals of redistribution, stabilization and allocation. Yet, so far, I have paid scant attention to the incentives that drive policy-makers in their quest for centralizing or decentralizing policy competencies. In order to do so, we must focus on the input-side of the political process. Here political parties play a crucial role. They reflect, absorb, construct, mould and channel political preferences into the policy process; they operate as an important interface between civil society and the political institutions. As such, an analysis of political parties, and the electoral process that legitimizes their *raison d'être* provides a first step in explaining *change* in federal systems.

Despite the prominent place of parties in Western Europe's parliamentary democracies, the interplay between the party or electoral system and federalism has been an under-explored domain by scholars of comparative federalism. William Riker was one of a few early authors writing on federalism to stress the relevance of parties for understanding the process of (de)centralization in a federation. 'When parties are somewhat decentralized,' so he claimed, 'then federalism is only partially centralized. Because of this perfect correlation... the inference is immediate: one can measure federalism by measuring parties. The structure of parties is thus a surrogate for the structure of the whole constitution' (Riker 1975: 137). This chapter seeks to illustrate the relationship between federalism, the party system and the internal organization of the main political parties. It is divided into four sections.

The first section provides a descriptive overview of the (territorial) nature of the party system. On the basis of the most recent general (central) election results, I will illustrate variations in the regional support base for the most important state-wide and non-state-wide parties.

The second section takes a closer look at the *non-state-wide* parties, in particular the ethno-regionalist parties. Ethno-regionalist parties put the

inženjeringa, da određene zajednice dobiju odgovarajući broj garantovanih predstavnika, njegovi su efekti u zakonodavstvu reko pozitivni i uglavnom predstavljaju stalni izvor trvenja i nezadovoljstva. Na kraju, treba naglasiti da ne mora da znači da će rešenje koje se pokazalo efikasnim u jednoj višenacionalnoj federaciji dati iste rezultate u drugoj – najčešće je neophodno da svaka od njih pronade sopstveni model mehanizama za prevenciju konflikata.

e) *Stranački (partijski) sistem*. Vilijam Riker je tvrdio da se federalizam može meriti merenjem stranačaka⁶²⁰ i da je struktura stranaka, dakle, surogat za strukturu celog ustava⁶²⁰ ipak, kako navodi Svenden, „međusobni uticaj između partijskog ili izbornog sistema i federalizma je nedovoljno istražena oblast u komparativnoj nauci o federalizmu.“⁶²¹ U suštini, veoma je značajno da li u federaciji deluju partije koje su integrativne i teže podšci celokupnog stanovništva ili su partije vezane za različite narode i federalne jedinice. U višenacionalnim federacijama najznačajnije partije koje ne deluju na celoj državnoj teritoriji su one „koje daju prioritet zahtevu za povećanje regionalnih ovlašćenja ili autonomije nad bilo kojim drugim pitanjem“, a „uporedna literatura ih određuje kao etnoregionalističke partije (*ethno-regionalist parties*)“⁶²²

Prave etnoregionalističke partije su one čiji je primarni, a nerekto i jedini cilj borba za što veću regionalnu autonomiju, naročito u slučajevima kada reprezentuju etničke grupe koje nemaju svoju matičnu državu (*„stateless nations“*). Takve političke stranke klasifikovao je Ferdinand Meler Romel (*Ferdinand Miller-Rommel*), razvrstavajući ih u četiri grupe: separatiste (*separatists*), levoliberalne federaliste (*left-libertarian federalists*), autonomiste (*autonomists*) i protekcioniste (*protectionists*).⁶²³ Separatisti su, razume se, najradikalniji tip etnoregionalističkih partija, koje ni po koju cenu ne odustaju od svojih zahteva za oцепljenjem od postojeće države i formiranjem suverene nacionalne države, čak ni po cenu članstva u Evropskoj uniji. Predstavnik te grupe stranka bila je, recimo, Baskijska separatistička partija (zabranjena 2003), koja je negovala veze sa baskijskom terorističkom organizacijom ETA. Druga grupa, levoliberalni federalisti, karakteristični su samo za evropski kontinent. Oni teže ka visokom stepenu decentralizacije, uz značajnu regionalnu samostalnost u tenije povezanoj Evropskoj uniji. Takve stranke su, na primer, Baskijska partija solidarnosti (*Eusko Alkartasuna – EA*) ili katalonska Republićanska levica (*Esquerra Republicana de Catalunya*). Cilj autonomista, kao treće grupe etnoregionalističkih partija, jeste da ostvare regionalnu autonomiju u okviru federalnog državnog uređenja, uz očuvanje svojih istorijskih teritorija i jezićke i kulturne posebnosti. Predstavnici te grupe su katalonska Konvergencija

3.2. Ethno-regionalist parties

Definition and ideological variation

Ethno-regionalist parties are parties that put the quest for regional autonomy at the *forefront* of their political agenda. Ethno-regionalist parties reflect the aspirations of ‘geographically [regionally] concentrated minorities which challenge the working order and sometimes even the democratic order of a nation state by demanding recognition of their cultural identity’ (Müller-Rommel 1994: 183, 1998: 19). Usually, they emerge in so-called ‘stateless nations’, such as Catalonia, the Basque Country, Scotland and Wales.

Scholars have distinguished between various types of ethno-regionalist parties. Ferdinand Müller-Rommel has suggested a fourfold classification. He distinguishes between separatists, left-libertarian federalists, autonomists and protectionists (Müller-Rommel 1994: 184–5).

The *separatists* are the most radical group. They seek full sovereignty for the nation which they claim to represent and do not wish to give up their sovereignty for membership of the EU. They do not necessarily shun away from linking up with paramilitary or terrorist organizations. Herri Batasuna (later renamed Euskal Herriarrok), the presently outlawed Basque separatist party which maintains organizational links with the Basque terrorist organization ETA, is the best example of a separatist party.

Left-libertarian federalists aim for a strong degree of decentralization and popular representation and seek regional independence within a stronger European Union. Thus, they propagate a Europe of rather than a Europe with the Regions. Ideologically, they are left leaning. Their defence of regionalism is often combined with a demand for recognition of a minority language and an emphasis on ‘new politics issues’ such as environmental rights or minority rights. The Scottish National Party (SNP), Plaid Cymru (Party of Wales), the Basque Solidarity Party (EA – Eusko Alkartasuna) and the Republican Left of Catalonia (Esquerra Republicana de Catalunya) belong to this left libertarian strand of ethno-regionalism.

The third group, the *autonomists*, propagates regional autonomy within the framework of a mature federal state. At their most extreme, these parties pay lip-service to full-blown regional independence. They aim for the protection of historical territorial rights, for example, *fieros* in the case of the Basque country, or of a minority language. Ideologically they are positioned in the centre or right of centre. Their frequent links with Catholicism also put them in a more conservative position on ethical issues. The best-known examples are the Catalan Convergence and Union (Convergència i Unió) and the Basque Nationalist Party (Partido Nacionalista Vasco). The Flemish People’s Union (Volsunie, recently renamed New Flemish Alliance) and the Democratic Front of Francophones (Front Démocratique des Francophones), a party which protects the rights of the French-speaking Belgians who live in Brussels and its adjacent areas, also belong to this group.

620 William H. Riker, „Federalism“, *Handbook of Political Science – Volume 5 – Governmental Institutions and Processes* (eds. F. I. Greenstein, N. W. Polsky), Reading 1975, 137

621 W. Svenden (2006), 141.

622 *Ibid.*, 146.

623 Ferdinand Müller-Rommel, „Ethno-regionalist Parties in Western Europe: Empirical Evidence and Theoretical Considerations“, *Non-State Wide Parties in Europe* (eds. D. L. Selzer, J. L. Newell, R. Mannheimers, L. De Winter), Barcelona 1994, 183

i unija (*Convergencia i Unió*). Baskijska nacionalistička partija (*Partido Nacionalista Vasco*). Nova flamanska alijansa (*Nieuw-Vlaamse Alliantie*) i Demokratski front frankofona (*Front Démocratique des Francophones*), koji štiti prava pripadnika francuskog jezika u briselskom regionu u Belgiji. Po pravilu, to su stranke ideološki orijentisane prema centru ili umerenoj desnici. Končno, protekcionističke stranke pokušavaju da očuvaju posebnost etničke grupe na periferiji, ali i njihovu vezu sa državnim centrom, ne propagirajući separatizam ni u najblažem obliku. To su obično stranke ideološkog centra.

Prema rečima Vilfrida Svendena, „etnoregionalističke partije više dužu svoj uspeh postojanju određene regionalne kulture nego okolnosti da li se nalaze ili se ne nalaze u regionu koji je socijalno-ekonomski i/ili politički marginalizovan.“⁶²⁴

Specifična regionalna kultura podrazumeva osećaj regionalne pripadnosti, koji je često povezan sa specifičnim društvenim i kulturnim identitetom, zasnovanim na manjinskom jeziku, drugačijoj religiji, eventualno posebnom pravnom sistemu i sl.⁶²⁵ U eri u kojoj partije ne mogu da računaju na stalnu i sigurnu podršku, biračko telo može da se preorijentiše na etnoregionalističke partije, kakve su stranke zelenih (Katalonski zeleni – *Iniciativa per Catalunya Verds* – separatistička su partija) ili radikalna desnica (npr. Flamanski interes – *Vlaams Belang* u Flandriji). To je naročito slučaj kada takve partije imaju harizmatične lidere, dobro organizovanu stranačku strukturu i povezane su sa civilnim društvom.⁶²⁶ Tim strankama naročito pogoduje sistem srazmernog predstavljanstva prilikom izbora za centralni parlament.⁶²⁶ Pritom, uspeh jedne etnoregionalističke partije u njenoj federalnoj jedinici može izazvati „efekat snežne lavine“ u drugim federalnim jedinicama, čime se dominacija regionalnih političkih aktera može proširiti na veliki deo države teritorije. Končno, „podrška etnoregionalističkim strankama može biti pojačana i nekim političkim odlukama državnih stranaka ili aferama koje podrivaju legitimitet centra.“⁶²⁷

Postojanje stranačkog sistema u kojem dominantnu ulogu imaju etnoregionalističke partije može biti veoma problematično u višenacionalnim federacijama. Na drugoj strani, može se kazati da je „ispravno dizajniran stranački sistem – ili, tačnije, institucionalni aranžman čiji je primarni cilj podsticanje stranačkog sistema određenog tipa – najtrajniji izvor federalne stabilnosti.“⁶²⁸ Ukratko, podsticanjem jačanja stranaka koje zastupaju federalne interese može se postići veći stepen harmonije u višenacionalnoj federaciji. Uprkos tome što predstavljaju heterogeno biračko telo, državne stranke nisu neosetljive na regionalne interese. One svoju unutrašnju orga-

Finally, the *protectionists* seek to safeguard the link between an ethnic group in the periphery, of which they are the defendants, and the centre. They do not propagate a form of separatism. Generally, they aspire to a hegemonic position within their region and have transformed into catch-all parties. Protectionist parties position themselves around the ideological centre to achieve that aim. We do not find a clear example of a ‘protectionist’ party within our group of case studies. However, in Western Europe the South Tyrolean People’s Party (SVP or Südtiroler Volkspartei) is its best example. The SVP defends the rights of the German-speakers who live in the Italian province of Bolzano-South Tyrol (itself a part of Trentino-Alto Adige, one of five Italian regions with a special status).

Table 5.2 summarizes the results for the most important ethno-regionalist parties (i.e. those parties which have assembled close to or more than 5 per cent of the regional vote) in the regions in which they campaign. In order to make the table comparable with Table 5.1 I list the electoral strength for these parties in the most recent *general* elections. We should note that, particularly in Spain, ethno-regionalist parties perform much better in

Table 5.2 Ethno-regionalist parties and their electoral performance in the most recent general (and regional) elections

Spain (2004)	Belgium (2003)*	United Kingdom (2005)
Canary Islands		
Coalición Canaria 23.5(30.8)	NVA 4.9(-)**	SNP 17.7(20.9)
Catalonia	Vlaams Blok*** 18.1(24.1)	Wales
CIU 20.8(37.6)		Plaid 12.6(20.5)
ERC 16.0(16.4)		Cymru
Galicia		
BNG 23.5(22.4)		
Navarra		
Nafarroa Bai 20.8(41.3****)		
Basque Country		
PNV 33.7(42.7*****)		
Eusko Alkartasuna 6.5		

Note: Performance in most recent regional elections prior to June 2005 listed in between brackets.

*In Belgium, the FDF formed an electoral alliance with the French-speaking Liberals.

**NVA in electoral alliance with Flemish Christian Democrats in Flemish 2004 regional elections.

***Strictly speaking, the classification of the Vlaams Blok as an ethno-regionalist party is debatable.

****NB On a joint list with PP in regional elections of 2003; campaigned as UPN.

*****PNV-EA on a joint list in regional elections in 2001. Regional election data 2001: Basque Country and Galicia; 2003: Canary Islands, Catalonia, Navarra, Scotland and Wales; 2004: Flanders.

Source: as for Table 5.1 for general election results; most recent Spanish regional election data provided by Liselotte Libbrecht; for Belgium: Ministry of the Interior; for the UK: BBC-Website (consulted on 8 May 2005).

624 W. Svenden (2006), 151.

625 Opširnije o tome: Evert De Winter, „Conclusion: a Comparative Analysis of the Electoral Office and Policy Success of Ethnoregionalist Parties“, *Regionalist Parties in Western Europe* (ed. L. De Winter, H. Tursan), London 1998, 214-235.

626 W. Svenden (2006), 152.

627 *Ibid.*, 153.

628 M. Filipov, P. C. Ordeshook, O. Shvetsova, 182.

i unija (*Convergència i Unió*). Baskijska nacionalistička partija (*Partido Nacionalista Vasco*). Nova flamanska alijansa (*Nieuw-Vlaamse Alliantie*) i Demokratski front frankofona (*Front Démocratique des Francophones*), koji štiti prava pripadnika francuskog jezika u briselskom regionu u Belgiji. Po pravilu, to su stranke ideološki orijentisane prema centru ili umerenoj desnici. Konačno, protekcionističke stranke pokušavaju da očuvaju posebnost etničke grupe na periferiji, ali i njihovu vezu sa državnim centrom, ne propagirajući separatizam ni u najblažem obliku. To su obično stranke ideološkog centra.

Prema rečima Vilfrida Svendena, „etnoregionalističke partije više duju svoj uspeh postojanju određene regionalne kulture nego okolnosti da li se nalaze ili se ne nalaze u regionu koji je socijalno-ekonomski i/ili politički marginalizovan.“⁶²⁴ Specifična regionalna kultura podrazumeva osećaj regionalne pripadnosti, koji je često povezan sa specifičnim društvenim i kulturnim identitetom, zasnovanim na manjinskom jeziku, drugačijoj religiji, eventualno posebnom pravnom sistemu i sl.⁶²⁵ U eri u kojoj partije ne mogu da računaju na stalnu i sigurnu podršku, biračko telo može da se preorijentiše na etnoregionalističke partije, kakve su stranke zelenih (Katalonski zeleni – *Iniciativa per Catalunya Verds* – separatistička su partija) ili radikalna desnica (npr. Flamanski interes – *Vlaams Belang* u Flandriji). To je naročito slučaj kada takve partije imaju harizmatične lidere, dobro organizovanu strukturu i povezane su sa civilnim društvom. Tim strankama naročito pogoduje sistem srazmernog predstavljanja prilikom izbora za centralni parlament.⁶²⁶ Pritom, uspeh jedne etnoregionalističke partije u njenoj federalnoj jedinici može izazvati „efekat snežne lavine“ u drugim federalnim jedinicama, čime se dominacija regionalnih političkih aktera može proširiti na veliki deo države teritorije. Konačno, „podrška etnoregionalističkim strankama može biti pojačana i nekim političkim odlukama državnih stranaka ili aferama koje podrivaju legitimitet centra.“⁶²⁷

Postojanje stranačkog sistema u kojem dominantnu ulogu imaju etnoregionalističke partije može biti veoma problematično u višenacionalnim federacijama. Na drugoj strani, može se kazati da je „ispravno dizajniran stranački sistem – ili, tačnije, institucionalni aranžman čiji je primarni cilj podsticanje stranačkog sistema određenog tipa – najtrajniji izvor federalne stabilnosti.“⁶²⁸ Ukratko, podsticanjem jačanja stranaka koje zastupaju federalne interese može se postići veći stepen harmonije u višenacionalnoj federaciji. Uprkos tome što predstavljaju heterogeno biračko telo, državne stranke nisu neosetljive na regionalne interese. One svoju unutrašnju orga-

624 W. Svenden (2006), 151.

625 Opširnije o tome: Lieven De Winter, „Conclusion: a Comparative Analysis of the Electoral Office and Policy Success of Ethnoregionalist Parties“, *Regionalist Parties in Western Europe* (eds. L. De Winter, H. Tursan), London 1998, 214–235.

626 W. Svenden (2006), 152.

627 *Ibid.*, 153.

628 M. Filipov, P. C. Ordeshook, O. Shvetsova, 182.

why at present the attachment to the Belgian state is stronger in Wallonia than in Flanders (De Winter 2002).

The discussion above made clear that theories of ‘economic nationalism’ cannot adequately explain why ethno-regionalist parties flourish better in some regions than in others. Therefore, it is said that ethno-regionalist parties owe their success more to the presence of a particular regional culture than to whether or not they are located in a region which is socio-economically and/or politically marginalized. A particular regional culture requires a feeling of ‘regional belonging’ that is often linked with specific ‘socio-cultural’ identity markers, such as a minority language or a distinct legal or church system (De Winter 1998: 214–35; Moreno 2001). In an era in which parties can no longer be assured of fixed support, voters may flock to ethno-regionalist parties or to new political movements, such as the Greens or extreme-right-wing parties. As argued above, new political movements can combine their ideological agenda with a demand for separatism. The Vlaams Belang in Belgium or the Catalan Greens, which is filed as a separate party from the Spanish Greens, exemplify this.

In his comparative study of ethno-regionalist parties Lieven De Winter raised a number of additional factors which may have contributed to the rapid rise or demise of parties. Some of these factors may be endogenous to the party’s organization, profile and strategy; others are exogenous to it (De Winter 1998: 214–35).

For instance, among the endogenous factors, De Winter pointed at the relevance of skilful party leadership, centralized party organizational structures and strong linkages with civil society. Party leaders are important because, particularly during the formative years of the party, they represent the external face of the party. Skilful leadership can also help to bridge often widely diverging views on other issues, such as socio-economic policy making or ethical disputes. The best-known example of strong leadership is Jordi Pujol. Pujol served as party leader of the CDC (Convergència Democràtica de Catalunya), the predecessor of the CiU of which he also became the leader. Pujol headed all the Catalan governments between 1980 and 2003. His decision to retire from politics caused a leadership vacuum and contributed to the party’s bad showing in the 2003 regional elections. Charismatic leadership has also contributed to the early successes of the Flemish People’s Union, Plaid Cymru and the SNP. Relatively strong levels of organizational centralization may help to push through policy decisions where leadership alone cannot do the trick. Finally, the Catalan ethno-regionalist parties have a relatively broad social movement (spanning cultural and civic associations) to lean on. This provided them with a firm basis of support which the ethno-regionalist parties elsewhere are missing (De Winter 1998: 232; Keating 2001a on Catalonia and Scotland; Keating, Loughlin and Deschouwer 2003 on Belgium).

The success of ethno-regionalist parties is also determined by a number of factors exogenous to the party. A first factor relates to the presence of certain

Nakon početnih kolebanja u prve dve decenije postojanja australijske federacije, Vrhovni sud Australije je počev od 1920. godine svoju jurisprudenciju u raspedi nadležnosti ipak zasnovao na stavovima koje je američki Vrhovni sud formulisao u presudi *McCulloch v. Maryland*.⁹⁴³ U toj odluci sudija Džon Maršal je zaključio da ovlašćenja saveznog zakonodavca nisu neograničena, ali da mu stoje na raspolaganju sva sredstva koja su pogodna za izvršenje određenog cilja, ukoliko su tom cilju jasno prilagođena, ukoliko nisu izričito zabranjena i ukoliko su u skladu sa slovom i duhom ustava. Tim stavom je postavio temelj doktrine implicitnih nadležnosti (*implied powers*), koju australijski Vrhovni sud uglavnom i danas primenjuje.⁹⁴⁴ Treba, ipak, pomenuti da su u praksi Vrhovnog suda Australije primenjeni i pokušaji „re-definisanja“ te doktrine⁹⁴⁵ i ograničavanja implicitnih nadležnosti. To se sporadično događalo u više navrata još četrdesetih i pedesetih godina prošlog veka, ali je učestalo u poslednje dve decenije. Među odlukama koje su imale takvu intenciju nalaze se presude u slučajevima *Nationwide News Pty Ltd v. Wills* od 1992, *Cunliffe and Another v. The Commonwealth of Australia* od 1994, *Leask v. Commonwealth* od 1996. i *Re Pacific Coal Pty Ltd; Ex parte Construction, Forestry, Mining and Energy Union (CFMEU Case)* od 2000. godine.⁹⁴⁶ Ali, uprkos tim nastojanjima u vezi sa principom implicitnih nadležnosti, Lesli Zajns (*Leslie Zines*) zaključuje da je „teško primetiti bilo kakve suštinske promene“ tog principa „u odnosu na tradicionalni pristup“⁹⁴⁷ odakle proizlazi da je on još uvek glavni ošlonac prilikom rešavanja sporova u domenu raspodele nadležnosti.

Ustavni sud Španije je „odigrao veoma važnu ulogu u definisanju centralnih i regionalnih zakonodavnih nadležnosti“, a „istaknuti rezultati Suda su posledica teskoća izmene Ustava Španije i mnoštva nejasnoća u izlaganju podelje nadležnosti između centra i regiona.“⁹⁴⁸ U periodu od 1981. do 1991. godine, centralni organi su pred Ustavnim sudom Španije osporili ustavnost oko 10 odsto regionalnog zakonodavstva, dok su autonomne zajednice u istom periodu pokrenule postupak za kontrolu ustavnosti oko 20 odsto nacionalnih zakona.⁹⁴⁹ Pritom, „uprkos monopolu centra na predlaganje članova Ustavnog suda, SUS (Ustavni sud Španije – M. S.) je često odlučivao u korist regiona.“⁹⁵⁰ Jurisprudencija Ustavnog suda je na taj način obelodanila odnose između dva nivoa vlasti u ovoj kraljevini. Poseban značaj u praksi tog suda ima odluka o ustavnosti Statuta Katalonije od 2006, doneta 2010. godine.⁹⁵¹

⁹⁴³ Leslie Zines, *The High Court and the Constitution* (5th ed.), Sydney 2008, 50.

⁹⁴⁴ Neke od značajnijih odluka u vezi sa tom doktrinom su: *G. G. Crespin & Son v. Colac Co-op Farmers Ltd*, 21 C.L.R. 205 (1916); *Le Mesurier v. Connor*, 42 C.L.R. 481 (1929) i *Grimmell v. Marrickville Margarine Pty Ltd*, 93 C.L.R. 55 (1955).

⁹⁴⁵ L. Zines, 62-65.

⁹⁴⁶ 177 C.L.R. 1 (1992), 182 C.L.R. 272 (1994), 187 C.L.R. 579 (1996), 203 C.L.R. 346 (2000).

⁹⁴⁷ *Ibid.*, 65.

⁹⁴⁸ W. Swenden (2006), 83.

⁹⁴⁹ Paul Heywood, *The Government and Politics of Spain*, Basingstoke 1995, 147.

⁹⁵⁰ W. Swenden (2006), 84.

⁹⁵¹ O toj odluci bilo je govora u četvrti raspravli.

However, in other respects, the court's jurisprudence has not always supported the federal point of view. Some landmark rulings illustrate this.

In the *Concordat Case* (1957) the court ruled that the regions could not be bound by an agreement between the Pope and (Nazi) Germany (the federal state) on religious education. This would jeopardize the constitutionally guaranteed autonomy of the regions in primary and secondary education (Sawer 1969: 83). Using the Concordat as a means to intrude into an area of regional competence would violate the principle of 'federal good faith' (*Bundestreue*). Likewise, in the *Television Case* (1961) the court held that a federal government's power to regulate the technical aspects of broadcasting does not empower it to run its own broadcasting services (Sawer 1969: 84). In this sense, the court safeguarded the role of the regions in education and in organizing the public media.

In more recent years the GCC has played a prominent role in overseeing the 'political neutrality' of fiscal equalization measures. The modalities of these measures are specified in the constitution and in federal legislation. The GCC has regularly condemned the federal government for distributing regional resources on a political instead of an equitable basis. For instance, in 1987, the CDU-FDP federal government worked out a scheme that would have increased structural aid to attract private investments in most of the CDU-controlled regions. This scheme left Baden-Württemberg and a majority of the SPD regions in the cold. In the same year, the federal government allocated its oil extraction revenues to all the CDU but only to two SPD governed regions (Rensch 1989: 343-5). The GCC forced the federal government into reconsidering both measures. In 1998, the Constitutional Court forced the federal and regional governments into a more profound renegotiation of the entire fiscal equalization scheme by 2004 (Ziblat 2002). This time, party-political acrimony did not underpin the complaint. Rather, fiscally strong regions (Bavaria, Baden-Württemberg and North-Rhine Westphalia) felt punished by the excessive and arbitrary nature of the equalization arrangements (see Chapter 4).

The Spanish Constitutional Court (SCC) has played a very important role in carving out central and regional legislative competencies. The court's prominence results from the difficulty of amending the Spanish constitution and from the overall ambiguity in which the distribution of central-regional competencies is spelled out. The court's jurisprudence can affect central-regional issues in three regards. First, it decides on appeals against statutes of autonomy, organic laws, ordinary laws of national and regional legislatures and international treaties. Second, it decides on appeals for the protection of citizens' rights and freedoms. These include the thorny issue of regional languages. Finally, it decides on appeals with regard to the catalogues of central and regional competencies (Agranoff and Gallarin 1997: 8).

Between 1981 and 1991, the central government appealed against nearly 10 per cent of all regional bills. In the same period, regional governments

appealed against more than 20 per cent of all central bills (Heywood 1995: 147; Stone Sweet 2000). This underlines the acrimonious character of inter-governmental relations. Many complaints are framed in an ongoing power struggle between the central and regional governments. Therefore, they take the form of 'abstract review questions'. Apart from the Prime Minister, Parliamentary President, or 50 members of the central lower house or second chamber, abstract review procedures can be triggered off by the regional executives as well.

Of 143 abstract review cases that passed the court between 1981 and 1990, 42 per cent were introduced by regions against central legislation; 31 per cent originated with the central government, usually against legislation passed by the regions (Stone Sweet 2000: 65). Between 1981 and 1982 the national government even challenged half of the laws that were passed by the Catalan or Basque regional parliaments. Thereafter the share of regional laws that was challenged by the central government declined to approximately 10 per cent. From the mid-1980s onwards, the regional governments increasingly challenged central laws. Catalonia and the Basque Country introduced two-thirds of the complaints. That share declined in the 1990s when some of the ethno-regionalist parties provided left- and right-wing central minority governments with the hoped-for legislative majorities. In return, the central government agreed to regional policy concessions (see Chapter 6).

Despite the centre's monopoly in nominating the members of the Constitutional Court, the SCC has often ruled in favour of the regions. For instance, influenced by the failed military coup in 1981, the Conservative UCD government sought to scale back and harmonize the process of devolution. To that purpose it enacted with the support of the Social Democrats (PSOE), *LOAPA (Ley Orgánica de Armonización del Proceso Autonómico)*. This bill prescribed central government approval for legislative acts that were adopted by the regional assemblies and reduced some of the powers already granted to the (historic) regions (Agranoff and Ramos Gallarín 1997: 12). The SCC's decision to strike down more than a third of this important law may be considered its most important ruling to date. The court's judgement clearly demonstrates that constitutional courts can and sometimes do act against the dominant central opinion. Although the ethno-regionalist parties fiercely opposed *LOAPA*, the bill had the full support of the two most important state-wide parties at the time. In its verdict, the court emphasized that 'autonomy' should mean that regions are entitled to make final decisions in certain competence areas.

In different rulings the SCC acknowledged the need of a coordinating central role in some policy areas that were first understood as being exclusively regional. Concrete examples are education, tourism, health care and economic development (Agranoff and Ramos Gallarín 1997: 13). In general, the SCC has sought to find a balance between two conflicting principles of

nastanjene u ukupno 16 nemačkih zemalja. Primere federacija sa velikom razlikom u veličini teritorije i broju stanovnika federalnih jedinica bile su i Sovjetski Savez i SR Jugoslavija. Blagodareći brojčanoj nadmoći svog stanovništva, pomenute federalne jedinice u tim federacijama igraju ključnu ulogu u federalnim odnosima i imaju u praksi dominantan položaj u federalnom sistemu. S druge strane, opravdane strepnje najslabijih federalnih jedinica od majoritacije, poput malog Ostrva Princa Edvarda u Kanadi ili Bremena u Nemačkoj, treba da se tumače u smislu relativne nemoci i opasnosti od, kako je navodio Ivo Duhaček (*Ivo Duhaček*), „nezadovoljstva i otpora federalnom načinu života.“¹³⁵¹

Drugi vid faktičke asimetrije u tesnoj je vezi sa prvim i odnosi se na predstavljenoost federalnih jedinica u centralnim federalnim organima, pre svega u federalnom parlamentu. Zahvaljujući brojnosti stanovništva, pojedine federalne jedinice imaju veliki broj predstavnika u donjem domu federalnog parlamenta, u kojem su svi građani federacije predstavljeni kao jedinstveno biračko telo. Tako, na primer, već pomenute provincije Ontario i Kvebek imaju natpolovičnu većinu u kanadskom Domu komunata (*House of Commons*). Njihovi predstavnici, teoretski, imaju mogućnost da samostalno biraju i razrešavaju vladu, imajući u vidu da se u parlamentarnom sistemu vlasti operativna egzekutiva bira i razrešava i opštepredstavniškom domu federalnog parlamenta.¹³⁵² To u praksi ipak ne znači mnogo jer pripadnost političkim partijama u modernim državama ima mnogo veći značaj od pripadnosti članova parlamenta federalnim jedinicama.

Treći oblik faktičke asimetrije posledica je primenjenog modela partijskog sistema u federacijama, u slučaju kada nacionalne i regionalne stranke imaju važnu ulogu na federalnom nivou. Burdžis navodi da je „uloga regionalnih stranaka koje izražavaju teritorijalne raznolikosti neodvojivi deo asimetričnog partijskog sistema.“¹³⁵³ Kao primere, najbolje je navesti ulogu bavarске Hrišćansko-socijalne unije (*Christlich-Soziale Union – CSU*) u Nemačkoj¹³⁵⁴ ili Kvebečke partije (*Parti Québécois – PQ*) u Kanadi. Regionalne

1351 Ivo Duhaček, *Comparative Federalism: The Territorial Dimension of Politics*, New York 1970, 282.

1352 O tome je bilo reči u petoj raspravi.

1353 M. Burgess, 220.

1354 Bavarska Hrišćansko-socijalna unija predstavlja primer još jednog tipa regionalne stranke koja, iako nije etnoregionalistička (o čemu je bilo reči u četvrtoj raspravi), vodi borbu za određene regionalne interese. Ona je na federalnom nivou stupila u trajni savez sa Hrišćanskom demokratskom unijom (*Christlich Demokratische Union – CDU*), čime je donkle ublažila svoj regionalni karakter. Hrišćansko-socijalna unija uživa veliku podršku u matičnoj Bavarskoj, a glasovi koje osvoji ta regionalna stranka čine oko četvrtine glasova koje osvoji koalicija na federalnom nivou. Međutim, Hrišćansko-socijalna unija ne ističe kandidate izvan Bavarske na saveznim (ili regionalnim) izborima, baš kao što ni Hrišćanska demokratska unija to ne čini u Bavarskoj. Shodno tome, Hrišćansko-socijalna unija relativno slobodno vodi borbu za interese Bavarske. Ta partija je bila na čelu bavarске vlade koje su se zalagale za kompetitivni model federalizma, tražeći veću fiskalnu autonomiju i prenošenje dodatnih zakonodavnih ovlašćenja na zemlje. Ona je, pored toga, zauzela značajno konzervativniji stav o brojnim etničkim i verskim pitanjima

their Flemish, respectively French-speaking, identity is an important, but not necessarily their most relevant, identity-marker. Regional autonomy issues may dominate their political agenda from time to time, particularly in the wake-up of federal or regional elections or in the coalition-building process that ensues from them. Yet none of these parties owes its existence to the issue of regionalism.

The group of non-state-wide parties is in itself diverse and in some respects their classification cross-cuts that of the ethno-regionalist parties. A good case in point is the Flemish extreme-right wing 'Flemish Block' (Vlaams Blok, recently renamed Vlaams Belang or 'Flemish Interest'). The Vlaams Belang combines the profile of an extreme-right-wing, anti-immigrant and ethically conservative party with that of a party which seeks Flemish independence. In Switzerland, the Lega dei Ticinesi provides a similar mix or right-wing populist ideology with a quest for strengthening the Italian-speaking minority within the Swiss federation, particularly those who live in the canton of Ticino. To that purpose it campaigns for the formal recognition of the Ticinese dialect, seeks to reduce the linguistic rights of the German-speakers who live in that region and demands more fiscal returns from the centre, as the party perceives the current taxation system as favourable to the German-speaking cantons (Mazzoleni 1999).² In general, party scholars have separated these extreme-right-wing or populist parties from the group of ethno-regionalist parties, despite the fact that some of their voters may vote for them because of their regionalist agenda.

The Bavarian Christian-Social Union (Christlich-Soziale Union) exemplifies yet another type of non-state-wide party which, although not ethno-regionalist, seeks to strengthen some regional interests. Federally, it formed a de facto permanent alliance with the state-wide Christian Democrats (CDU or Christlich Demokratische Union). Both parties form one parliamentary party group in Berlin and they unite on a common Chancellor-candidate. The CSU is a major regional player. Helped by the pre-selection of a CSU candidate for the Chancellorship, it attracted 58.6 per cent of the Bavarian vote in the 2002 federal elections. The CSU electorate represents 9 per cent of the total German electorate and almost a quarter of the aggregate Christian Democratic vote. The CSU does not put up candidates outside Bavaria in federal (or regional) elections, and nor does the CDU within Bavaria. Consequently, the CSU has been relatively free to voice Bavarian interests. Given the region's socio-economically stronger position, CSU-led Bavarian governments have propagated a more competitive type of federalism. They have requested more regional fiscal autonomy and the devolution of additional legislative powers to the regions. The party also has taken a more conservative stance on a number of ethical or religious issues (abortion, crucifixes in classrooms, gay partnerships, immigration) than the federal CDU, reflecting the more traditionally agrarian and Catholic background of its electorate.

partije koje imaju veliki uticaj na federalnom nivou izazivaju neretko značajnu faktičku asimetriju u federaciji jer otvoreno zastupaju interese svojih federalnih jedinica. Posebno je interesantan slučaj Belgije, u kojoj su sve partije regionalne i ne postoje tzv. integrativne partije na federalnom nivou, pošto u toj zemlji funkcionišu paralelno dva partijska sistema jer je to jedini način da se očuva kakva-takva ravnoteža u političkom životu te federacije.¹³⁵⁵

Konačno, posljednji oblik faktičke asimetrije u federacijama posljedica je različitih ekonomske snage federalnih jedinica. „Imajući u vidu ogromne razlike u broju stanovnika, konstitutivne jedinice, *ipso facto*, variraju u svojim poreskim kapacitetima i finansijskim resursima upšte.“¹³⁵⁶ Nema sumnje da bogate federalne jedinice, poput Kalifornije u SAD, Bavarke u Nemačkoj ili Ontarija u Kanadi, imaju mogućnost da za sebe obezbede veliki politički uticaj i autonomiju u slučajevima kada smatraju da im je to u interesu. Ipak, obrnuta postavka, da ekonomska zavisnost od uplata federalnih transfera dovodi neminovno do permenatne ponizne političke saglasnosti siromašnih federalnih jedinica, ne stoji i predstavljala bi preterano uprošćavanje federalnih odnosa. Finansijska podređenost ne mora da znači da su ekonomski slabije federalne jedinice u federaciji potpuno lišene političke moći. Ekonomski slabije jedinice različitio reaguju zavisno od političke situacije, pa njihove odnose sa federalnim centrom treba u svakom konkretnom slučaju analizirati sa posebnom pažnjom.

Osim četiri pomenuta oblika asimetrije, faktičkom asimetrijom se uslovljeno može smatrati i položaj južnoafričke provincije Zapadni Kejp, koja je jedina od deset federalnih jedinica donela svoj ustav, iako i ostale na osnovu federalnog ustava imaju to pravo. Ta asimetrija je faktička iz razloga što prema federalnom ustavu sve provincije imaju jednaka prava, ali ih u praksi različitio iskorišćavaju. Takva situacija je delimično posledica obavezne normativne kontrole provincijskih ustava pre njihovog stupanja na snagu. Ustavom Južnoafričke Republike predviđena je kontrola ustavnosti ustava provincija kao obavezna faza u njihovom usvajanju (čl. 144). Nadležnost južnoafričkog Ustavnog suda da daje potvrde (*certification*) na ustave federalnih jedinica u praksi se pokazala kao veoma korisna. Ustavni sud Južnoafričke Republike je do sada u dva navrata imao priliku da odlučuje o ustavnosti provincijskih ustava. U slučaju provincije KvaZulu-Natal, Ustavni sud je još 1996. godine odbio da da potvrdu na ustav te federalne jedinice, zbog njegove neusklađenosti sa federalnim ustavom i ustavnim principima od 1993. godine.¹³⁵⁷ Ta provincija do danas nije donela sopstveni ustav,¹³⁵⁸ S druge strane, odlučuju-

(abortus, istopolni brakovi, imigracija) u odnosu na federalnu Hrišćansku demokratsku uniju, odražavajući tradicionalno agrarna i katoličku pozadinu svog biračkog tela.

¹³⁵⁵ O uticaju regionalnih stranaka na federalno uređenje bilo je reči u četvrtoj raspravi.

¹³⁵⁶ M. Burgess, 218.

¹³⁵⁷ Odluka: *Certification of the KwaZulu-Natal Constitution* (CCT15/96) [1996] ZACC 17; 1996 (11) BCLR 1419; 1996 (4) SA 1098 (6 September 1996).

¹³⁵⁸ No, zanimljivo je da je provincija KvaZulu-Natal ranije imala Ustavni sud čije su nadležnosti i funkcionisanje bili uređeni rezolucijom njenog provincijskog parlamenta (*Resolution of the Legislative Assembly*). Opsirnije o tome: A. Mavčič, 131–132.

ПРИЛОГ БРОЈ ДВА:

Синоптички приказ платираних делова књиге

Soeren Keil, *Multinational Federalism in Bosnia and Herzegovina*, Surrey-Burlington 2013
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Марка Станковића, *Преображајни федералне државе – десет расправа о промененој природи и суштини федерализма*, Правни факултет Универзитета у Београду, 2020.

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MARKO STANKOVIĆ

PREOBRŽAJI FEDERALNE DRŽAVE

Deset rasprava o promenjenoj
prirodi i suštini federalizma



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ASHGATE

MULTINATIONAL FEDERALISM IN BOSNIA AND HERZEGOVINA

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rativnom, poriče ili bar sumnja u njen federalitvni karakter, odnosno da joj se priznaje slaba primjena federalizma.²⁵

Zbog te nesaglasnosti među poslenicima ustavnopravne nauke o tome koliko ima federalnih država u svetu, osnovni problem u pisanju studije koja teži ka tome da bude sveobuhvatna jeste pravilan izbor zemalja koje će biti uzete u obzir prilikom analize i koliko će pažnje biti posvećeno svakoj od odabranih zemalja jer nemaju sve federalne države podjednak značaj i uticaj na razvoj federalnog državnog uređenja. Postoji nekoliko definicija federalne države koje mogu predstavljati dobre smernice u obavljanju tog zadatka.

Preston King (*Preston King*) definisao je federalnu državu kao „institucionalni aranžman koji ima oblik suverene države i razlikuje se od drugih država isključivo činjenicom da njena centralna vlada uključuje regionalne jedinice u proces donošenja odluka na nekoj ustavno utemeljenoj osnovi.“²⁶ Poznati ruski ustavni pravnik, Jekaterina Kozlova (*Jekaterina Kozlova*) i Oleg Kutafin (*Oleg Kutafin*), definisali su federalnu državu kao „spajanje dve ili nekoliko država u jednu novu državu“ – što znači da federacija predstavlja „složenu državu, u čiji sastav ulaze druge države.“²⁷ Jedan od nesporno najuticajnijih teoretičara federalizma i federacije Kenet Ver (*Kenneth Wheare*) smatrao je da su federalne države one koje primenjuju „federalno načelo“ (*federal principle*), koje je definisao kao „metod podele nadležnosti gde su i opšta i regionalne vlade, svaka unutar svoje sfere, usklađene i nezavisne.“²⁸ Konačno, prema rečima Vilijama Rikera, „esencijalne institucije federalizma su, naravno, vlast federacije i vlasti federalnih jedinica, pri čemu obe vrste vlasti upravljaju nad istom teritorijom i stanovništvom i svaka ima ovlašćenje da nezavisno druge donosi neke odluke.“²⁹ Ta četiri kriterijuma – suverenost federalne države (King), složeni sastav federalne države (Kozlova i Kutafin), primena federalnog načela (Vots) i sistem dvostruke vlasti nad istom teritorijom i istim stanovništvom (Riker) – uglavnom su opredelila izbor i klasifikaciju federalnih država u ovoj studiji.

Posle dugotrajnog razmatranja brojnih stavova i uzimanja u obzir svih navedenih kriterijuma, izvršen je konačan izbor federalnih država za razmatranje, a među njima je napravljena izvesna klasifikacija, pa je nekima od njih posvećena veća, a nekima manja pažnja. Centralno mesto u analizi zauzimaju države o čijem federalnom karakteru ne postoji nikakav spor i koje su imale najveći uticaj na razvoj federalnog uređenja i na njegovo širenje u svetu. To su tri atehipske federacije – *Sjedinjene Američke Države*, *Švajcarska* i *Nemačka* – koje su, svaka na svoj način, predstavljale uzorne modele za gotovo sve kasnije formirane federalne države. U odnosu na te tri federacije „mere“ se i procenjuju sve ostale. Osim toga, veliki značaj u svetu federalizma imaju tri

25 J. Stefanović (1965), 521.

26 Preston King, *Federalism and Federation*, Beckenham 1982, 77.

27 Jekaterina I. Kozlova, Oleg E. Kutafin, *Konstitucionno pravo Rossii*, Moskva 2017, 126.

28 Kenneth C. Wheare, *Federal Government*, 4th ed., Oxford 1963, 10.

29 W. H. Riker (1987), 9.

the idea of a federal (united) Europe, as can be found in the writings of Altiero Spinelli,³⁵ and finally the decolonialisation movements and the introduction of federal systems in all parts of the world.³⁶

One of the major inputs in the academic debate about the origin, practical application, and development of federal states was written by Kenneth Wheare in 1946 in his book *Federal Government*.³⁷ Wheare defined a federal government as follow:

Federal Government exists [...] when the powers of government for a community are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are some regional authorities being co-ordinate with and not subordinate to the others within its own prescribed sphere.³⁸

The basis of federal government is, in Wheare's terminology, the federal principle defined as „the method of dividing powers so that the general and the regional governments are each, within a sphere, co-ordinate and independent.“³⁹ Kenneth Wheare's work on federalism can be described as a major theory on federalism. His distinction between federal principle and federal government demonstrates for the first time the methodological distinction between the normative ideology of federalism and its practical application in a federation. Furthermore, his in-depth analysis of the development of federations and about actors' behaviour greatly influenced the work of contemporary authors on federalism.⁴⁰ Although Wheare does not directly mention the connection of federalism as a political ideology and the principle of democracy, there can be no doubt that his definition of federalism is based on the precondition of a democratic form of government.

One author who does not make this important connection between democracy and federalism is William Riker. It is worth mentioning Riker here, as his theory will be the basis of the discussion of the Dayton Peace Agreement, what Riker

35 Most notably his manifesto about a federal Europe, which would be the basis of peace and prosperity on the continent: Spinelli, Altiero and Rossi, Ernesto: 'The 1944 Ventotene Manifesto Towards a Free and United Europe' in: Karmis, Dimitros and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 199–202.

36 For example: India became independent 1947, Nigeria became independent in 1960. Both states adopted federal systems, although with different success.

37 Here used: Wheare, Kenneth: *Federal Government*, 4th edition, Oxford University Press: Oxford, 1964.

38 Ibid. p. 12.

39 Ibid. p. 10.

40 Indeed, Ronald Watts, one of the most important political scientists in the field of comparative federalism today, was a PhD student of Wheare in Oxford. In addition, the works of authors such as Preston King, Michael Burgess, John Pinder and John Kincaid are heavily influenced by Kenneth Wheare's definition.

would call the “federal bargaining” for the Bosnian federation. Riker was the first to apply rational choice and bargaining theory to federalism. As Mikhail Filippov summarises:

Riker’s federal theory is based on the assumption that federalism is an outcome of institutional bargaining among politicians. Dependent on the positions that they occupy in the political process, politicians are divided over the core provisions of the federal constitution, most importantly, over degree of the state centralization. The crucial problem that the theory must solve is that institutional bargaining among rational politicians leads to instability of any “balanced” institutional solution, and, as a result, either the federal government or the constituent governments will dominate.⁴¹

Riker’s bargaining theory has two important disadvantages, which will also be discussed later in the Bosnian case. First, he claims that he has developed a general theory of the origins of federations. The federal bargaining, however, has seen major differences to Riker’s theory in countries like Belgium, Bosnia and Iraq. Second, Riker’s use of empirical political science methodology does not allow him to distinguish between federalism as a normative political ideology and a federation as an empirical reality of federalism in a state. This leads to Riker’s assumption, that all states who claim to be federal can be studied with the same tools. Indeed, Riker does not distinguish between federalism in the United States and in the Soviet Union.⁴²

The definitions of federalism, federation and federal political systems used in this study are based on the works of three authors of federal theory. Firstly, the distinction between federalism and federation will be used, which was first introduced by Preston King in his work *Federalism and Federation* in 1982.⁴³ King argues that federalism can be defined as ‘taken philosophically or ideologically rather than institutionally, most frequently appeals for a marked degree of regional independence and autonomy.’⁴⁴ In his analysis, federalism describes an ideology, namely the idea of regional autonomy within one state. It is the application of the principle of shared sovereignty. He continues by defining a federation as ‘an institutional arrangement, taking the form of a sovereign state, and distinguished from other states solely by the fact that its central government incorporates regional units into the decision procedure on some constitutionally entrenched basis.’⁴⁵ By distinguishing both terms, King did not ignore the connection of both, ideology and practical application and he argues:

41 Filippov, Mikhail: ‘Riker and Federalism’ in: *Constitutional Political Economy*, Vol. 16, 2005, pp. 93–111, here quoted p. 95.

42 Riker, William.: *Federalism: Origins, Operation, Significance*, 1968, pp. 38–9.

43 King, Preston: *Federalism and Federation*, Croom Helm: Beckenham 1982.

44 Ibid. p. 74.

45 Ibid. p. 77.

federalne jedinice i uspostavlja složeno državno uređenje. Stoga je jasno da federacije mogu nastati na dva načina – „odozdo“ i „odozgo“ – to jest ujedinjavanjem nezavisnih entiteta ili reorganizacijom unitarne države. Prvi metod nastanka federacija obično se naziva „agregacijom“ (*association, aggregation*), a drugi „devolucijom“ (*dissociation, devolution*). Tvorac termina „agregacija“ i „devolucija“ je Ronald Vots, koji ih je upotrebio pre više od pola veka, i ti termini su dugo bili gotovo jednodušno prihvaćeni od teoretičara.²⁷⁵ Nikolas Eroni (*Nicholas Aroney*) navodi da su federacije nastale agregacijom one čiji je *ratio* nastanka, makar u najvećoj meri, bio taj da su „ranije nezavisne političke zajednice integrisane u federalni sistem“ (SAD, Švajcarska, Kanada, Nemačka, Australija, Indija²⁷⁶), dok su federacije nastale devolucijom „one u kojima je ranije unitarna država razvila vlast u nekoliko regionala unutar te države“ (Španija, Belgija, Južnoafrička Republika).²⁷⁷ Države članice federacija nastalih agregacijom bile su ili nezavisne države ili kolonije sa visokim stepenom autonomije u okviru Britanske imperije. U federacijama koje su nastale agregacijom „federalni veliki prasak (*federal big bang*) pretvara izvoru suverenost država članica u autonomiju, zbog primata federalnog ustava.“²⁷⁸ Kad je reč o federacijama nastalim metodom devolucije, „na ovaj način su obrazovane latinoameričke federacije, zatim Austrija i u osnovi (sa izvesnim specifičnostima u prelaznom periodu) i tri federacije u zemljama koje su se donedavno nazivale socijalističkim – SSSR-u, Čehoslovačkoj i Jugoslaviji.“²⁷⁹

U novijoj teoriji su unekoliko precizirani načini nastanka federacija, pa umesto klasična dva metoda nastanka neretko navodi tri.²⁸⁰ Alfred Stepan (*Alfred Stepan*) među prvim je razradio koncepte „okupljajućeg“ (*coming together*) i „održavajućeg“ (*holding together*) federalizma. Prvi koncept je opisao kao slobodno udruživanje bivših nezavisnih država (SAD, Nemačka i Švajcarska), a drugi kao federalizaciju bivše unitarne države (Belgija, Španija).²⁸¹ Prvi oblik je u suštini agregacija, a drugi devolucija. Osim toga, on je uveo i treću kategoriju „sastavljajućeg federalizma“ (*putting together*), koji se odnosi na nedemokratske federacije, stvorene silom i neretko pod stranim uticajem (poput Bosne i Hercegovine). Uvođenje u podelu te treće grupe federacija posledica je sve češćeg formiranja federalnih država pod pritiskom među-

²⁷⁵ Ronald Watts, *New Federations – Experiments in the Commonwealth*, Oxford 1966, 115.

²⁷⁶ Reorganizacijom i spajanjem 552 države na indijskom potkontinentu u znatno manji broj federalnih jedinica 1949. godine formirane su dve federacije – Indija i Pakistan.

²⁷⁷ Nicholas Aroney, „Formation, Representation and Amendment in Federal Constitutions“, *The American Journal of Comparative Law*, 54/2006, 277, 282.

²⁷⁸ E. Palermo, K. Kössler, 40.

²⁷⁹ M. Jovićić (1992), 36–37.

²⁸⁰ Tako, recimo, Palermo i Keeler ne svoje načine nastanka samo na agregaciju i devoluciju već navode tri mogućnosti da federacija nastane: spajanje (*coming-together*), održavanje (*holding-together*) i sastavljanje silom (*putting– or forced-together federations*). (E. Palermo, K. Kössler, 40).

²⁸¹ Alfred Stepan, „Federalism and Democracy: Beyond the U.S. Model“, *Journal of Democracy* 10, 4/1999, 19–34.

In a well known essay in the *Journal of Democracy*, Alfred Stepan introduced a concept important to the origins of federalism. He claimed that the Rikerian model of “federal bargaining” cannot explain the origin of several federations and introduced the concepts of “coming-together federalism” and “holding together federalism”. The former he described as the free association of formerly independent states (USA, Germany, and Switzerland) and the latter as the federalisation of a former unitary state (Belgium, Spain).⁵⁰ Furthermore, in his description of the relationship of democracy and federalism in multinational states, Stepan highlights the importance of the overrepresentation of minorities at the central level, the influence of the national groups in the upper chamber and the autonomy for the nations in their constituent unit.⁵¹ Although he refers to the debate of Liberal Nationalism and bases his arguments on the same values of equality between all national groups and the value of diversity itself, he points out that, in every multinational federation, there exists a conflict between individual rights, mostly protected by central institutions, e.g., a bill of rights, and group rights, protected by the constituent parts (for example, special language rights and bank holidays). This conflict is the reason why Liberal Nationalism, according to Stepan, cannot give an answer to the question of multinational federalism.⁵² Finally, Stepan makes a clear argument for the importance of federalism in multinational states: if multinational states want to establish a functioning democracy, they will have to take federal solutions into account.⁵³

The same argument is presented by Nancy Bermeo. Basing her analysis on statistical data of the *Minorities at Risk* project, she comes to the conclusion that federalism has contributed to a peaceful conflict-management in ethnically and nationally divided countries.⁵⁴ She presents federalism as a viable solution to societies that face ethnic conflicts and claims against critics that “it is historically inaccurate to argue that it [federalism S.K.] brings on separation.”⁵⁵ For her, the core of a functional federation in divided societies is the voluntary character of the federation; in fact a stable multinational democratic federation can only work if it is voluntary. “If political leaders are to adopt federalism voluntarily, they will have to know which institutional variations suit their countries best.”⁵⁶ She argues

⁵⁰ Stepan, Alfred: ‘Federalism and Democracy: Beyond the U.S. Model’ in: *Journal of Democracy*, Vol. 10, No. 4, 1999, pp. 19–34. He also introduces the concept of “putting together federalism” which refers to the forceful and non-democratic nature of a federation and he names the Soviet Union as an example.

⁵¹ Ibid. p. 24.
⁵² Ibid. pp. 30–2.

⁵³ Ibid. p. 24.

⁵⁴ Bermeo, Nancy: ‘The Import of Institutions’ in: *Journal of Democracy*, Vol. 13, No. 2, April 2002, pp. 96–110, here p. 99. Bermeo also introduces the category of “forced together federalism” which refers to the forced creation of a federal system by outsiders. This system lacks the core element of a “voluntary union.”

⁵⁵ Ibid. p. 107.

⁵⁶ Ibid. p. 108.

„više od polovine federacija formiranih u moderno doba raspalo, a skoro sve su imale secesionističke pokrete.“³³⁶ Autori koji argumentuju protiv održivosti federalnog uređenja u heterogenim društvima ukazuju, počev od devetdesetih godina XX veka, na dezintegraciju „tri komunističke etnofederacije“ – Sovjetskog Saveza, Jugoslavije i Čehoslovačke.³³⁷ Pucanje tih federacija po nacionalnim šavovima bilo je, prema rečima Palmera i Kesslera, snažno upozorenje da „nacionalno zasnovane federalne jedinice“ raspolazu veoma značajnim „političkim resursima, koji mogu da se usmere ka mogućem pokušaju secesije“, a da se „postojeći subnacionalni parlament, vlade i administracije, koji poseduju vlast u važnim oblastima politike, mogu lako preobratiti u jake nacionalne institucije nezavisne države.“³³⁸ Kako bi pripremile svoje stanovništvo za takav poduhvat, federalne jedinice mogu da zloupotrebe svoje nadležnosti u oblastima kulture, upotrebe jezika, obrazovanja i informisanja, izgrađujući postepeno nacionalnu svest u okvirima federacije. U tom pogledu, velika opasnost vreba i od regionalnih manjinskih političkih partija, koje često uopšte ne prikrivaju svoje secesionističke aspiracije, neretko ih obražujući ekonomskim i političkim interesima.

Postoje, razume se, i danas autori koji svim raspoloživim snagama brane shvatanje da je federalna država dobar okvir za višenacionalne zajednice. Tako Vil Kimlika optimistično tvrdi da je „potpuno prirodno (je) da višenacionalne zemlje usvoje federalne sisteme“ jer je sasvim logično da „zemlje koje su formirane kao federacije naroda usvoje i neki oblik političke federacije.“³³⁹ I Majkl Burdžis zaključuje da je federalno državno uređenje „najuspešniji institucionalni odgovor na nacionalne zahteve za priznavanje u višenacionalnim demokratijama.“³⁴⁰ On taj oblik državnog uređenja vidi kao pogodno rešenje za višenacionalna društva, zaključujući da „njihova genijalnost počiva u njihovoj sposobnosti da, pod ustavnim pokrivačem, prilagode i pomire razne oblike jedinstva sa raznim oblicima različitosti.“³⁴¹ Vejn Norman (Weyne Norman) smatra da „višenacionalni federalizam podrazumeva da se prihvati težnja nacionalnih manjina za samoupravom, uglavnom stvaranjem pokrajine (ili pokrajina) u kojoj jedna ili više manjinskih grupa mogu činiti

³³⁶ W. Riker (1987), 114.

³³⁷ Philip G. Roeder, „Soviet Federalism and Ethnic Mobilization“, *World Politics* 43/1991, 196.

³³⁸ E. Palmero, K. Kössler, 99.

³³⁹ Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford - New York 2001, 96. Kimlika je predlagao da se unutrašnje granice u okviru države (federacije) povuku tako da se najveće nacionalne manjine, koje čine značajan udeo u stanovništvu, pretvore u regionalne većine u okviru „nacionalno zasnovanih jedinica“ (Will Kymlicka, „Is Federalism a Viable Alternative to Secession?“, *Theories of Secession* (ed. P. B. Lehning), London 1998, 125).

³⁴⁰ M. Burgess, 129.

³⁴¹ *Ibid.* 156. „Federalizam i federacija su zadržali svoj karakterističan odnos prema procesu izgradnje države i nacionalne integracije, ali je to odnos u kojem su se pojavljivale i razvijaile ogromne varijacije“ (*Ibid.*, 74).

Federalism in Multinational States

Both Liberal Nationalism and consociational democracy offer forms of accommodating diversity within the settings of a liberal democratic state. Both theories highlight the importance of autonomy for different nations within one state in questions of identity, culture and language. Both theories demonstrate that the application of federalism would be a useful tool to guarantee autonomy while, at the same time, promoting participation in central institutions. Will Kymlicka, as a representative of the Liberal Nationalist school, argues: “[w]here national minorities form clear majorities in their historic homelands, and particularly where they have some prior history of self-government, it is not clear that there is any realistic alternative to TA [Territorial Autonomy S. K.] or multinational federalism.”²⁹

From Liberal Nationalism to Multinational Federalism

Multinational federalism refers to the intention ‘to accommodate the desire of national minorities for self-government, principally by creating a province (or provinces) in which one or more minority groups can constitute a clear majority of the citizens and in which they can exercise a number of sovereign powers.’³⁰ Thus, we see the direct link between the Liberal Nationalist claim of minority self-determination and multinational federalism. Furthermore, Kymlicka has demonstrated the connection between Liberal Nationalism and multinational federalism and argues that [over the past thirty years, Western democracies have developed a number of interesting, and [...] effective models for accommodating ethnocultural diversity. One of these models involves the use of federal [...] forms of territorial autonomy to enable self-government for national minorities and indigenous peoples.]³¹ Multinational federalism, Kymlicka argues, promotes the liberal values of peace and individual security, democracy, individual rights, economic prosperity and inter-group equality in the multinational polity.³² Even more importantly, “[d]emocratic federalism has domesticated and pacified nationalism, whilst respecting individual rights and freedom.”³³

Whilst generally positive about the potential of federalism as a tool of conflict-management in divided societies, Kymlicka argues that the introduction of federalism in multinational states was not the end of discussions about secession

²⁹ Kymlicka, Will: ‘Federalism and Secession: At Home and Abroad’ in: *Canadian Journal of Law and Jurisprudence*, Vol. 13, No. 2, July 2000, pp. 207–24, here p. 217.

³⁰ Norman, Wayne: *Negotiating Nationalism (Nation-Building, Federalism, and Secession in the Multinational State)*, Oxford University Press: New York and Oxford 2006, pp. 87–8.

³¹ Kymlicka, Will: ‘Federalism and Secession’, 2000, p. 207.

³² *Ibid.* pp. 212–13.

³³ *Ibid.* p. 213.

jasnu većinu građana i u kojima mogu da vrše brojne suverene vlasti.³⁴² Ali čak ni savremeni zagovornici višenacionalnog federalizma, međutim, ne negiraju u današnje vreme rizik secesije u višenacionalnim federacijama.³⁴³ U tom smislu, neki od njih, poput Kimlike, percipiraju koncept višenacionalnog federalizma kao paradoksalan: „dok on pruža nacionalnim manjinama prihvatljivu alternativu za secesiju, on im takođe pomaže da učine secesiju mnogo realnijom alternativom”.³⁴⁴ Stoga je Zeren Kajl oprezniji, pa navodi da je „važno istaći da federalizam ne pruža odgovor na sva relevantna pitanja u višenacionalnim državama, niti njegova primena smanjuje zahteve za dodatnom autonomijom i secesijom”.³⁴⁵

U prethodnoj raspravi je već rečeno da i način nastanka u određenoj menci utiče na stabilnost i održivost višenacionalnih federacija. Posebno složena situacija postoji u federalnim državama koje su nastale devolucijom, a u kojima svaka nacija ima „svoju” federalnu jedinicu.³⁴⁶ Nekada je vladalo shvatanje da je takav model poželjan i da će u slučaju da u federaciji postoji više nacija „njihov nacionalni identitet biti najbolje obezbeđen ako se svaka od njih organizuje kao posebna federalna jedinica u okviru federacije”.³⁴⁷ Nažalost, iskustvo je pokazalo da su u federacijama u kojima je svaka nacija bila samooorganizovana u jednu federalnu jedinicu državno jedinstvo zemlje i državana celina često bili razoreni, što je na kraju rezultiralo njihovim nasilnim ili mirnim raspadom. U takvim državama je delovanje dezintegrativnih, centrifugalnih sila naročito jako i gotovo nezaustavljivo, pa se sam proces federalizacije često završava kao dezintegracija jer „nacionalna” federalna jedinica predstavlja savršenu osnovu za formiranje buduće nezavisne nacionalne države.

Imajući u vidu sve navedeno, Frančesko Palermo i Karl Kesler smatraju da je danas debata o višenacionalnom federalizmu zapala u ćorsokak (*impasse*), navodeći tri argumenta u prilog takvoj tvrdnji.³⁴⁸ Prvo, ustavni aranžmani u višenacionalnim federacijama su među sobom suviše različiti, pri čemu vanpravnih faktori, poput ekonomske situacije u zemlji i političke kulture stanovništva, imaju veoma značajnu ulogu, pa se ne može prepoznati i definisati jedan univerzalni model višenacionalne federacije. Drugo, dve grupe pisaca – zagovornici i oponenti višenacionalnog federalizma – fokusiraju se na različite uporednopravne primere: dok prvi veličaju ohrabrujuća iskustva koja su zabeležena u federacijama poput Kanade, Belgije, Španije i, ponekad, Indije,

³⁴² Wayne Norman, *Negotiating Nationalism (Nation-Building, Federalism, and Secession in the Multinational State)*, New York – Oxford 2006, 87–88.

³⁴³ F. Palermo, K. Kössler, 100.

³⁴⁴ Will Kymlicka, „Multinational Federalism in Canada: Rethinking the Partnership”, *Policy Options*, March 1998, 142.

³⁴⁵ S. Keil, 38.

³⁴⁶ U teoriji je ustaljeno razlikovanje onih višenacionalnih federacija u kojima svaka nacija ima „svoju” federalnu jedinicu (bivše socijalističke federacije Čehoslovačka i SFRJ) i onih u kojima broj nacija ne koincidira sa brojem federalnih jedinica (Kanada, Indija, Pakistan).

³⁴⁷ M. Jovčić (1973), 48.

³⁴⁸ F. Palermo, K. Kössler, 100.

sve ostale federacije u svetu. Drugim rečima, „ako sumiramo federalizam u švajcarskoj federaciji, on uključuje sledeća obeležja: jezik, religioznost, teritorijalnost (kantonalizam), socijalne klase, kontraste između urbanog i ruralnog i konzervativni tradicionalizam.“³⁶⁶ Uzimajući u obzir sve specifičnosti Švajcarske, jasno je da bez obzira na to da li se ona može svrstati među višenacionalne federacije (pri čemu argumenti protiv višenacionalnosti deluju uverljivije), ona se, usled niza specifičnosti, ne može uzeti kao merilo za ocenu da li je federalno državno uređenje valjano rešenje za višenacionalne države. Jer „politički poredak i stabilnost u Švajcarskoj izgledaju pomalo paradoksalno“, a „švajcarska politička stabilnost i legitimitet su ukorenjeni u razlikama i raznovrsnosti, što su upravo karakteristike koje su izvor problema, podela i tenzija u Belgiji, Kanadi, Indiji i Maleziji.“³⁶⁷

Imajući u vidu sve navedeno, može se reći da, s jedne strane, Švajcarska u određenoj meri jeste „preteča“ višenacionalnih federacija, iako je u nauci sporan njen višenacionalni karakter. Razlog za to leži u činjenici što je ta federacija, ipak, prva složena država koja je uspeła da pomiri različitosti njenih jezičkih, verskih i kulturnih grupa i da kasnije uspostavljenim federacijama posluži kao ideja vodiča. S druge strane, međutim, švajcarski federalni model poseduje tako veliki broj specifičnosti da ga je nemoguće ponoviti bilo gde u svetu. U tom smislu, Švajcarsku ne treba isticati kao argument u prilog teze o federaciji kao dobrom okviru za višenacionalne zajednice iz dva osnovna razloga: prvo, njen višenacionalni karakter je krajnje sporan, pri čemu argumenti protiv višenacionalnosti deluju uverljivije zbog veoma izraženog „švajcarskog identiteta“ njenih građana; i drugo, okolnosti pod kojima je ta federacija nastala i opstala neponovljivi su na bilo kojoj tački zemaljske kugle. Zato se Švajcarska u najboljem slučaju može posmatrati kao preteča višenacionalnih federacija u jednom uskom, vrlo ograničenom smislu.

3. Značaj demokratije u federacijama i dodatni izazovi u višenacionalnim federacijama. Demokratija u svakoj državi, bez obzira na oblik vladavine, državne vlasti i državnog uređenja ima ogroman značaj – ona je neizostavan element moderne države vladavine prava. Suština savremene demokratije iskazao je Leonardo Morlino (*Leonardo Morlino*) rečima da se „dobrom demokratijom može smatrati ona koja predstavlja stabilnu institucionalnu strukturu putem koje se ostranjuju sloboda i ravnopravnost građana kroz legitimno i ispravno funkcionisanje njenih institucija i mehanizama.“³⁶⁸ S druge strane, Wolfgang Merkel (*Wolfgang Merkel*) dobro zapazi da moderna demokratija počiva na pet ključnih karakteristika: demokratskim izborima, političkim pravima, građanskim pravima, horizontalnoj odgovornosti (podela vlasti, vladavina prava) i monopolu vlasti koja leži u rukama demokratski izabranih predstavnika.³⁶⁹

³⁶⁶ *Ibid.*, 119.

³⁶⁷ M. Burges, 120.

³⁶⁸ Leonardo Morlino, „What is a Good Democracy?“, *Democratization* 11, 5/2004, 12.

³⁶⁹ Wolfgang Merkel, „Embedded and Defective Democracies“, *Democratization* 11, 5/2004, 36. Prema tvrdnji Pjera Maneta (*Pierre Manent*), demokratije karakteristične suverenošću naroda.

Wolfgang Merkel argues an embedded democracy can be described by five core characteristics:¹³

1. Democratic elections.
2. Political rights.
3. Civil rights.
4. Horizontal accountability (separation of powers, rule of law).
5. Monopoly of power lying in the hands of democratic elected representatives.

This definition is closer to a substantial definition of democracy. Merkel offers a much more inclusive definition. The core of democracy is the holding of regular democratic (therefore, free and fair) elections, because those elections ensure that the political authority of the representatives is legitimate, since ‘political authority can only be called legitimate, if the people are the holder of sovereignty.’¹⁴ Anthony Birch defines democratic elections as the core of every democracy, because only those elections fulfil the task of an open and fair recruitment process, provide competition and guarantee an effective control of the representatives by those who are represented.¹⁵

Furthermore, political and civil rights must be guaranteed. Civil rights, such as the freedom of the person or the freedom to own property, as well as fundamental political rights, such as the freedom of speech and the freedom of information, must be constitutionally guaranteed and interference by politicians must be prohibited. Furthermore, the state has to protect those rights as this is the initial reason why individuals sign the social contract.¹⁶ Additionally, citizens must have the right to participate actively in the political sphere by having the ability to run for office as well as controlling their representatives.

The separation of powers and horizontal accountability are especially important for democratic systems because they prevent elected representatives from abusing power. As Pierre Manent argues, democracies are characterised by the sovereignty of the people and the guarantee of liberty for the people. Therefore, he speaks of democracies as ‘a system of separations.’¹⁷ Horizontal accountability is also connected to the rule of law.

¹³ Merkel, Wolfgang: ‘Embedded and Defective Democracies’ in: *Democratization*, Vol. 11, No. 5, December 2004, pp 33–58, here p. 36.

¹⁴ Vorländer Hans: *Demokratie (Geschichte, Formen, Theorien)*, Bundeszentrale für Politische Bildung: Bonn 2003, p. 111 (translation by KEL). All other translations from German into English, if not explicitly highlighted, by KEL.

¹⁵ Birch, Anthony H.: *The Concepts and Theories of Modern Democracy*, 2nd edition, Routledge: London and New York 1995, pp. 76–7.

¹⁶ For example, see the explanations of John Locke: Locke, John: *Two Treatises of Government*, 3rd edition Cambridge University Press: Cambridge 1988, §87, §88 and §134 especially.

¹⁷ Manent, Pierre: ‘Modern Democracy as a System of Separations’ in: *Journal of Democracy*, Vol. 14, No. 1, January 2003, pp. 114–25, here pp. 114–16.

Poseban značaj demokratija ima u složenim, federalnim državama. U nauci je široko rasprostranjeno mišljenje da federalno uređenje može opstati samo u državama sa razvijenom demokracijom. Štaviše, mnogim državama koje su u ustavima predvidele federalno uređenje, ali ne počivaju na demokratskim načelima u teoriji se odriče federalni karakter i smatraju se kvazifederacijama ili federacijama-fasadama. Majkl Burdžis upire prstom upravo u neke od takvih država, tvrdeći da „možemo ceniti ograničenja federacije u ovim okolnostima ako obratimo pažnju na dostignuća Nigerije, Malaje, centralnoafričke federacije, zapadnoindijske federacije, Jugoslavije, Čehoslovačke i Sovjetskog Saveza, uzimajući u obzir i nedostatak liberalne demokratije u poslednja tri slučaja.“³⁷⁰ U stranoj ustavopravnoj nauci je oduvek bio osporavan posebno federalni karakter bivših socijalističkih federacija, usled pomanjkanja demokratije. Vilijam Riker je socijalističke federacije sa jednopartijskim sistemom (SSSR i SFRJ) nazvao „diktatorskim federalizmima“,³⁷¹ dok Zeren Kaji navodi da se „primena federalizma u Sovjetskom Savezu i u Jugoslaviji stoga odvijala izvan demokratskog okvira, jer je bila podrivana jednopartijskom vladavinom.“³⁷² Vilfrid Svenden smatra da u federaciji „centralne i regionalne vlasti moraju imati demokratsku strukturu“, što pre svega podrazumeva da „građani moraju imati pravo da biraju svoje predstavnike u skladu sa svojim ličnim političkim naklonostima“ i zaključuje da „bivši Sovjetski Savez, Čehoslovačka, Jugoslavija, Ujedinjeni Arapski Emirati i savremeni Pakistan ne mogu da se smatraju pravim federacijama.“³⁷³ O federalnom nasleđu socijalističkih federacija biće reči u narednoj tački ove rasprave.

O povezanosti i interakciji demokratije i federalizma mnogo je pisano jer demokratski politički režim ima posebnu ulogu u federacijama, neretko sasvim drugačiju od one koju ima u jedinstvenim državama. Jovićić je smatrao da se „demokratija, koja po definiciji predstavlja vladavinu većine, ali uz poštovanje i obezbeđenje prava manjine, u federalnoj državi, pravno posmatrano, ostvaruje na poseban način, sa specifičnostima uslovljenim ovim oblikom državnog uređenja.“³⁷⁴ U federacijama, kao što je poznato, prevashodno se primenjuju različite forme klasične predstavničke demokratije jer „ni neposredna ni participativna demokratija nisu pokušale da zamene pred-

da i jemstva slobode za građane. On govori o demokratizaciji kao „sistemu razdvajanja (system of separation)“. Vid. Pierre Manent, „Modern Democracy as a System of Separation“, *Journal of Democracy* 14, 1/2003, 114–116.

³⁷⁰ M. Burgess, 110.

³⁷¹ W. Riker (1987), 76. Prema mišljenju D. Popovića, SSSR je bio „retak primer jedne federacije koja je, ma koliko to izgledalo paradoksalno, potpuno centralistički uređena. Sva je vlast u državi usredsređena, ne u jednom federalnom organu, nego u jednoj strani, koja pak nije federalistički uređena, nego centralistički“ (D. Popović, 61).

³⁷² S. Kell, 24.

³⁷³ W. Svenden (2006), 10.

³⁷⁴ M. Jovićić (1973), 234.

Finally, the monopoly of power must lie in the hands of the democratically elected representatives. No other institution or group should have any influence in governmental affairs, although this point does not exclude the development of corporatist mechanisms within democratic systems. However, it does exclude the influence of the military, multinational corporations and other national or international actors on the direct legislative and executive process.

A definition of democracy needs to be compact and include a wide-range of qualities, instead of the limitation to an electoral democracy. This analysis can be summarised with Leonardo Morlino's statement, that a "good democracy can be said to be one that presents a stable institutional structure that realizes the liberty and equality of citizens through the legitimate and correct functioning of its institutions and mechanisms."¹⁸

Democratisation and Democracy Promotion

As it is one aim of this book to analyse the state of democracy in Bosnia and Herzegovina, we must look at democratisation theory and the idea of democracy promotion as both have been utilised in Bosnia since the beginning of the 1990s.

Democratisation is described by Geoffrey Pridham as "the whole process of regime change from authoritarian rule to the rooting of a new liberal democracy."¹⁹ This transition has different forms; Pridham,²⁰ as well as Claus Offe,²¹ distinguish between three forms of transition, which are inherent in a democratisation process. They describe the establishment of democratic institutions and democratic decision-making rules as the *political transition*. The development of a market economy and the establishment of some form of a social state are, meanwhile, defined as the *economic transition*. Finally, the formulation of a *national identification*, which includes the creation of a citizenship and the "nationalisation" of the political system including the introduction of a new anthem, a new flag and new symbols, is described as the *identity transformation*. In the Bosnian context these transformations overlap with the transition from war to peace, from membership in Yugoslavia to independent statehood and from independent statehood to integration into the EU. However, it is particularly important to highlight the importance of the third transformation discussed by Pridham and Offe, namely the creation of some form of national identity. Because this form of transition has not taken place in Bosnia in a way where there has been a development towards a

¹⁸ Morlino, Leonardo: 'What is a Good Democracy?' in: *Democratization*, Vol. 11, No. 5, December 2004 pp. 10–32, here p. 12 (Italics in the original version)

¹⁹ Pridham, Geoffrey: *The Dynamics of Democratization*, Continuum: London and New York 2000, p. 16.

²⁰ Ibid. p. 17.

²¹ Offe, Claus: *Varieties of Transition (The East European and the East German Experience)*, MIT Press: Cambridge (Mass.) 1997, p. 32.

stavničku demokratiju.³⁷⁵ Ali predstavljanje u saveznoj državi ima složeniji oblik nego u unitarnoj – ne vodi se računa samo o tome da svi građani budu adekvatno predstavljeni nego se mora obratiti pažnja i na predstavljenoost federalnih jedinica. Tu ne dolazi do izražaja samo narodna suverenost u skladu sa pravilom „jedan čovek – jedan glas“ nego se mora voditi računa i o složenoj strukturi federalne države. Drugim rečima, nije dovoljno obezbediti samo jednakost i ravnopravnost svih građana federacije kao jedinstvenog biračkog tela, nego i ravnopravnost i jednakost federalnih jedinica kao sastavnih elemenata federalne države.

U višenacionalnim federacijama se situacija u vezi sa demokratijom i predstavljanjem dodatno usložava jer je potrebno obezbediti ravnopravnost i zaštitu ne samo građana i federalnih jedinica nego i naroda federacije, posebno naroda koji su učestvovali u stvaranju federacije („konstitutivnih naroda“). Zato u višenacionalnim federacijama moraju biti pruženi adekvatni odgovori na dva dodatna izazova – prvi je očuvanje identiteta njihovih naroda, a drugi je garantovanje posebnih prava naroda federalnim ustavom.

Prvi izazov u višenacionalnim federacijama jeste očuvanje i ispoljavanje identiteta naroda koji su formirali federaciju. U tom smislu, „normativna osnova demokratske države pomera fokus sa individualnih na grupna prava jer su „višenacionalnu federaciju formirali različiti *demos*, a ne jedan legitimizujući *demos*“.³⁷⁶ Stoga liberalne vrednosti jednakosti i slobode, kao važni principi demokratije, moraju biti preispitani u višenacionalnom kontekstu, gde „jednakost postaje pravo na različitost, a sloboda mora biti koncipirana kao sloboda izbora i, prema tome, sloboda izbora kulture s kojom se može poistovetiti“.³⁷⁷ Zbog toga bi i državljanstvo i nacionalni identitet u višenacionalnoj federaciji trebalo da budu uređeni tako da se omogućava da svaki građanin ima državljanstvo svoje federalne jedinice i cele federacije i da ima dvostruki identitet, odnosno da se identifikuje i kao pripadnik svoje nacije, ali i kao građanin celokupne federacije.³⁷⁸

Drugi izazov u višenacionalnim federacijama jeste jasno definisanje prava naroda koji su učestvovali u stvaranju federacije.³⁷⁹ Federalni ustav bi trebalo da bude glavni oslonac u tom procesu. Njime je moguće, a neki smatraju da je i neophodno, definisati narode, jasno podeliti nadležnosti između različitih nivoa vlasti i zajemčiti kolektivna prava. Štaviše, prema shvatanju nekih pisaca, ustavi višenacionalnih federacija trebalo bi da budu relativno meki,

375 F. Palermo, K. Kössler, 113.

376 S. Keil, 44.

377 *Ibid.*

378 Ramon Maiz, „Democracy, Federalism and Nationalism in Multinational States“, *Identity and Territorial Autonomy in Plural Societies* (eds. W. Safran, and R. Maiz, Ramon), Portland 2000, 37-42.

379 „Drugi uticaj na demokratiju može se opisati kao pomak ka priznavanju, nacionalnoj samoupravi i grupnim pravima u empirijskoj stvarnosti višenacionalne federacije“ (S. Keil, 45).

state. Based on Daniel Elazar's conception of federalism as self-rule and shared-rule,⁶¹ multinational federalism offers autonomy (self-rule) to nations who are concentrated in a clearly defined territorial unit, whilst at the same time, ensuring their participation in decision-making at the central level through shared-rule provisions such as their representation in second chambers and/or in grand coalitions.

Multinational Federalism and Multinational Federation

As can be seen in the above discussions, the core issues in multinational federations will be concerned with the quality of democracy and the concurrent strength of nationalism in these federations. The departure point of this part shall, therefore, be the agreement that federalism is an appropriate tool to manage the aspirations of different nations within the borders of one state.

Democracy in Multinational Federations

There is a continuing debate in the recent literature about the effects of federalism on democracy and vice versa.⁶² Whilst there has recently been some important research on the connection between federalism and democracy,⁶³ there has yet to be a wider academic discussion on the interplay of the two ideas in an environment of rival nationalisms, ie. in a multinational state.

The debate about democracy in multinational states is affected in two ways by the introduction of a federal system. First, the normative foundation of the democratic state shifts away from a focus on individual to group rights. Multinational federations are formed by different *demos*, instead of one legitimating *demos*.⁶⁴ Furthermore, the liberal values of equality and justice as underlying values of democracy need to be reconsidered in a plural environment. Equality becomes a 'right to diversity' and liberty has to be conceptualised as 'freedom of choice' and, therefore, a freedom to choose a culture to identify with. Finally, **citizenship and**

61 Elazar, Daniel: *Exploring Federalism*, The University of Alabama Press: Tuscaloosa 1987.

62 See, for example: Lane, Jan-Erik and Ersson, Svante: 'The Riddle of Federalism: Does Federalism Impact on Democracy?' in: *Democratization*, Vol. 12, No. 2, April 2005, pp. 163-82. They argue that according to their data, federalism has little or no impact on democracy. Conversely, Kevin Rousst and Olga Shvetsova argue that representative democracy is a necessary condition for federalism. See: Rous, Kevin and Shvetsova, Olga: 'Representative Democracy as a Necessary Condition for the Survival of a Federal Constitution' in: *Publius: Journal of Federalism*, Volume 37, No. 2, 2007, pp. 244-61.

63 This gap in the literature has been filled by: Burgess, Michael and Gagnon, Alain (eds): *Federal Democracies*, Routledge: London 2010.

64 Maiz, Ramon: 'Democracy, Federalism and Nationalism in Multinational States', in: Safran, William and Maiz, Ramon (eds): *Identity and Territorial Autonomy in Plural Societies*, Frank Cass: Portland 2000, pp 37-8.

kako bi mogli bez problema da prate promene u tim složenim društvima.³⁸⁰ Kaji ističe poseban značaj fleksibilnosti federalnog ustava u asimetričnim federacijama, u kojima je asimetrija uvedena kao mehanizam za postizanje ravnoteže u federalnim odnosima.³⁸¹ On ističe da „asimetrična raspodela nadležnosti, kao i pravo veta naroda u centralnim institucijama o svim pitanjima koja se tiču njihovog identiteta, ne uravnotežuju demokratsko donošenje odluka unutar višenacionalne države, ali dovode do legitimnog sporazuma u federaciji kao 'partnersvu među jednakim narodima', čiji je glavni cilj očuvanje i promovisanje različitih nacionalnih identiteta unutar federacije.“³⁸² Prema tom shvatanju, ključni element demokratske višenacionalne federacije je takav oblik demokratije koji, s jedne strane, sadrži konsocijativne mehanizme, poput velikih koalicija i prava manjinskih veta, dok, s druge strane, promoviše asimetričnu raspodelu ovlašćenja između federacije i federalnih jedinica, kao i između samih pojedinaca.³⁸³

Kao odgovori na pomenute izazove u višenacionalnim federacijama, u teoriji su se u novije vreme posebno razvili koncepti liberalnog nacionalizma i konsocijativne demokratije, o kojima će biti reči odmah nakon kratkog razmatranja o federalnom nasleđu bivših socijalističkih federacija.

4. Federalno nasleđe (nedemokratskih) socijalističkih višenacionalnih federacija. Nestanak triju nekadašnjih višenacionalnih socijalističkih federacija, iako im, kao što je napomenuto, mnogi ustavnopravni pisci osporavaju federalni karakter usled nedostatka demokratije, umnogome je pokolebao teoretičare federalizma u stavu da je federalni okvir dovoljno širok da na pravi način reši probleme u heterogenim, višenacionalnim društvima. Socijalističke federacije su, međutim, iza sebe ostavile značajno federalno nasleđe jer su njihove nekadašnje federalne jedinice prihvalile izvesne oblike federalizma.

Jedina nekadašnja socijalistička federacija koja za sobom nije ostavila nikakvo federalno nasleđe jeste Čehoslovačka, iza koje su ostale dve unitarne države, Češka i Slovačka. Ali slučaj Čehoslovačke kao višenacionalne federacije koja je prestala da postoji zaslužuje pažnju zbog toga što je sasvim specifičan. Čuveni „pilišani razlaz“ dve države dogodio se 1993. godine u neobičnoj atmosferi i pod veoma čudnim okolnostima. Ogromna većina Čeha i Slovaka je nakon disolucije federacije imala „pozitivan stav“ o onom drugom narodu,³⁸⁴ pri čemu su i Česi i Slovaci podržavali neku formu zajednice, a na-

identity have to be conceptualised in a framework that allows for plural citizenship and multiple identities.⁶⁵

The second impact on democracy can be described as a shift towards recognition, national self-government and group rights in the empirical reality of the multinational federation. The first evidence for this shift is the federal constitution. The recognition of all nationalities in the constitution as 'constituent peoples' of the state, the clear separation of powers between the central and provincial level and clear guarantees of group rights, such as multilingualism, are typical characteristics of a constitution of a multinational federation. Furthermore, federal constitutions in multinational states need to be relatively flexible. Ramón Maíz argues even for federalism as an 'open process'⁶⁶ and Requejo highlights the importance of the flexible and open character of a federal constitution in a multinational state.⁶⁷ Indeed, events in India and Canada demonstrate the necessary ability of a federal constitution to redraw borders within the federation.⁶⁸ We might extend the flexibility argument of multinational federation when examining the constitutional practice of asymmetrical federalism. Taking a first look at asymmetrical arrangements, especially concerning the distribution of powers between the central level and different constituent units, it could be argued that these forms of "unequal" treatment lead to undemocratic practices in reality. Asymmetrical distributions of power, as well as a veto right of nations within central institutions on all matters that concern their identity, do not counterbalance democratic decision-making within a multinational state but it enforces the legitimating agreement of the federation as a 'partnership among equal nations' whose main aim it is to preserve and promote the different national identities within the federation. Therefore, the essence of a democratic multinational federation is a form of democracy which is characterised by the consociational elements of grand coalitions (inclusion of all major nations at the central level) and minority veto rights. It, furthermore, promotes an asymmetrical distribution of powers between the central level and the provincial level and between the sub-units themselves. Finally, this mode of democracy decouples the nation from the state and acknowledges the composite and multinational character of the state.⁶⁹

⁶⁵ Ibid. pp. 37–42.

⁶⁶ Ibid. p. 53.

⁶⁷ Requejo, Ferran: 'Federalism in Plurinational Societies: Rethinking the Ties between Catalonia, Spain and the European Union' in: Kamis, Dimitros and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 311–20, here p. 312.

⁶⁸ Burgess, Michael: *Comparative Federalism*, 2006, p. 107. In 2000, India created the three new states of Chhattisgarh, Uttaranchal and Jharkhand. Canada recognised Nunavut, a territory in the eastern Arctic and gave self-government to the Inuit in 1999.

⁶⁹ In this way it fits in Sammy Smooha's category of a 'multicultural democracy.' However, he argues that minority nations in 'multicultural democracies' are not allowed to fully participate in the democratic decision-making body. See: Smooha, Sammy: 'Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies' in: *Nations and Nationalism*, Vol. 8, No. 4, 2002, pp. 423–31, here p. 425.

³⁸⁰ Ferran Requejo, 'Federalism in Plurinational Societies: Rethinking the Ties between Catalonia, Spain and the European Union', *Theories of Federalism. A Reader* (eds. D. Kamis, W. Norman), London 2006, 312; R. Maíz, 53.

³⁸¹ O asimetričnim federacijama će biti reči u desetoj raspravi.

³⁸² S. Keil, 45.

³⁸³ Sammy Smooha, 'Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies', *Nations and Nationalism* 8, 4/2002, 425.

³⁸⁴ Oskar Krejčí, *Čehoslovačka National Interests*, Boulder 1996, 171. 'Ova bliskost nacija koji obrazuju čehoslovačku federaciju i bila je osnovni razlog nastanka Čehoslovačke kao posebne države' (M. Jovtík, 1973, 43–44).

li federaciju, kao i pitanje ustavnog garantovanja prava tih naroda, dva posebna izazova primene demokratije u višenacionalnim federacijama.

Prema Burdžisovim rečima, „kada se razmatra problem manjinskih nacionalizama u kontekstu federalizma i federacije, jasno je da je reč o odnosu između niza briga koje se odnose na konkurentske identitete povezane sa nacionalnom lojalnošću i nacionalnom pripadnošću, kao i sa mnoštvom pitanja vezanih za preduslove liberalne demokratije.“³⁹⁸ Sasvim je jasno da višenacionalne federacije mogu biti uspešno i dugoročno rešenje samo u slučaju da omogućavaju očuvanje identiteta svih naroda koji čine stanovništvo federacije, ali i njihov osećaj zajedničke pripadnosti federaciji. S druge strane, ispoljavanje, očuvanje i zaštita posebnosti mogući su samo u demokratskom političkom ambijentu, pa su za višenacionalne federalne zajednice posebno važni demokratski mehanizmi koji će omogućiti takve uslove. Savremena teorija federalizma smatra da su u višenacionalnim federacijama posebno delotvorna dva savremena koncepta – liberalni nacionalizam i konsocijativna demokratija. Ili, kako navodi Zeren Kaji, „liberalni nacionalizam i konsocijativizam su dva pristupa višenacionalnom karakteru države u demokratskom okviru.“³⁹⁹ U nastavku će biti ukratko analizirane osnovne postavke dva koncepta, primeri njihove primene u uporednim ustavnim sistemima i stavovi teoretičara o njihovoj primenljivosti u višenacionalnim federacijama.

a) *Liberalni nacionalizam*. Liberalni nacionalizam (*liberal nationalism*) jeste teorijski koncept koji je naročito zastupljen u novom veku. On je za kratko vreme postao „ključna teorija u pristupu problemu različitosti i liberalne demokratije tokom poslednje decenije“, a „iako ne pruža inkluzivno rešenje za problem različitosti (višenacionalnosti) i liberalne demokratije, ona ističe glavne probleme i nudi neka važna zapazanja.“⁴⁰⁰ U najkraćem, taj koncept se temelji na kolektivnim pravima svih nacija koje čine stanovništvo jedne države. To je, kako navodi Tamir (*Yael Tamir*), *ideja prema kojoj bi* osim toga što svi građani imaju jednaka prava, *1* *sve nacije trebalo da uživaju jednaka prava* *2* *pri čemu „nacionalna prava počivaju na vrednostima koje povezuju pojedince sa njihovom pripadnošću naciji“*⁴⁰¹ Veza između liberalnih i nacionalnih vrednosti, njihov zajednički fokus na kulturnu pripadnost i personalnu autonomiju i njihova zajednička posvećenost socijalnoj pravdi temelj su liberalnog nacionalizma.⁴⁰² Prema Kimliknim rečima, dok su u procesu izgradnje nacije u Zapadnoj Evropi i drugim delovima sveta dominirali negativni postupci prema manjinama, liberalni nacionalisti tvrde da izgradnja nacije i nacionalna država zahtevaju novu definiciju u svetlosti postojanja

divided and multiethnic societies.⁴ This is because the potential for deep-rooted conflict, i.e. conflict between different segments of a society, is lower when the vast majority of the country identifies clearly with one nation and sees the polity they live in as their nation-state. Therefore, the prospect of consensus building is better and the potential for inter-group violence is lower. Furthermore, secessionist movements are more unlikely and political decisions are easier to accept when those who made them are part of the same national group.⁵

However, Steven Fish and Robin Brooks have challenged the assumption that mononational states are more likely to become a stable democracy than multinational states.⁶ They come to two major conclusions: firstly that '[g]reater ethnic homogeneity is *not* associated with more open political regimes' and secondly, that 'the degree of diversity is not shown to influence democracy's prospects.'⁷ Instead, they argue that it could not be demonstrated that multinational states have necessarily a worse political and economic performance.⁸

For multinational states this raises the following question: How can a democratic political system accommodate national diversity within a multinational state?

Liberal Nationalism

Liberal Nationalism has become the core theory to address the issue of diversity and liberal democracy over the last decade. Although Liberal Nationalism itself does not offer an inclusive solution to the problem of diversity (multinationality) and liberal democracy, it does highlight core problems and offers some important remarks.

Yael Tamir summarises Liberal Nationalism as 'predicated on the idea that all nations should enjoy equal rights' and deriving 'its universal structure from the theory of individual rights found at its core.' She further argues that '[i]f national rights rest on the value that individuals attach to their membership in a nation, then all nations are entitled to equal respect.'⁹ The connection between liberal and national values, their common focus on cultural affiliations and personal autonomy, as well as their shared commitment to social justice, are the foundation of Liberal Nationalism.¹⁰ In short, Liberal Nationalism is about minority rights.¹¹ Whilst

4 Karanymky, Adrian: 'The 2001 Freedom House Survey: Muslim Countries and the Democracy Gap' in: *Journal of Democracy*, Vol. 13, No. 1, January 2002, pp. 99–112, here p. 107.

5 Fish, Steven and Brooks, Robin: 'Does Diversity Hurt Democracy?' in: *Journal of Democracy*, Vol. 15, No. 1, January 2004, pp. 154–66.

6 Ibid.

7 Ibid. p. 160.

8 Ibid. pp. 162–4.

9 Tamir, Yael: *Liberal Nationalism*, Princeton University Press, Princeton 1993, p. 9.

10 Ibid. p. 6.

11 David Miller refers to the "nationality principle." See: Miller, David: 'Nationality in Divided Societies', in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*,

398 M. Burges, 104.

399 S. Kell, 31.

400 Ibid., 33.

401 Yael Tamir, *Liberal Nationalism*, Princeton 1993, 9.

402 S. Kell, 33.

manjinskih naroda u okviru granica nacionalne države.⁴⁰³ Stoga „argumenti liberalnog nacionalizma počivaju na pretpostavci da promovisanje različitosti kao takve postaje suštinska vrednost.“⁴⁰⁴ Postavlja se, međutim, pitanje: ako poštovanje i promovisanje različitosti postaje jedan od glavnih ciljeva države, koji su instrumenti i garancije za ostvarenje takvog cilja. I Tamir i Kimlika vide kulturnu i teritorijalnu autonomiju kao najbolji odgovor na postavljeno pitanje.⁴⁰⁵ A Kajl dodaje da „federalizam pruža takav oblik kulturne i teritorijalne autonomije i nudi dodatnu korist garantujući uključivanje određene manjinske nacije u donošenje odluka na (federalnom) državnom nivou.“⁴⁰⁶ Taj oblik državnog uređenja predstavlja, dakle, dobar okvir za ostvarivanje koncepta liberalnog nacionalizma.

Vii Kimlika insistira na vezi između liberalnog nacionalizma i višenacionalnog federalizma i tvrdi da su „u proteklih trideset godina zapadne demokracije razvile niz zanimljivih i [...] efikasnih modela za prilagođavanje etnokulturnoj raznolikosti“, a jedan od glavnih modela uključuje upotrebu federalnih [...] oblika teritorijalne autonomije kako bi se omogućilo samopravljanje nacionalnih manjina i autohtonih naroda.⁴⁰⁷ Višenacionalni federalizam, smatra Kimlika, promovise liberalne vrednosti mira i lične sigurnosti, demokratije, individualnih prava, ekonomskog prosperiteta i jednakosti među grupama u višenacionalnoj politici. Što je još važnije, „demokratski federalizam je pripitomio i umirio nacionalizam, poštujući pritom individualna prava i slobode.“⁴⁰⁸ Iako je generalno optimista u pogledu potencijala federalizma kao instrumenta za upravljanje konfliktima u podeljenim društvima, Kimlika tvrdi da uvođenje federalizma u višenacionalne države ne predstavlja kraj diskusija o otepljenju u višenacionalnim državama. Umesto toga, „prepoznaje se i potvrđuje osećaj nacionalnog identiteta među manjinskom grupom“, i, prema tome, „secesija postaje sve zamislivija i istaknutija opcija, čak i sa najbolje osmišljenim federalnim institucijama.“⁴⁰⁹

Takvi stavovi u suštini otkrivaju i potencijalnu opasnost teorijskog koncepta liberalnog nacionalizma – taj koncept, prema kojem se manjinskim narodima u federaciji priznaje širok dijapazon kolektivnih prava, ne isključujući nužno čak ni pravo na otepljenje, može biti koban po opstanak višenacionalnih federacija. On, drugim rečima, u sebi sadrži klicu za dezintegraciju federalne zajednice, pa je njegovo uspešno funkcionisanje neizvesno čak i u zemljama sa visokim nivoom demokratske političke kulture i ekonomskog razvoja.

403 Will Kymlicka, „Nation-building and Minority Rights: Comparing West and East“, *Journal of Ethnic and Migration Studies* 26, 2/2000, 187. Autor navodi čak devet elemenata liberalnog nacionalizma (*ibid.*, 196–199).

404 S. Kell, 34.

405 W. Tamir, 151; W. Kymlicka (2000b), 189.

406 S. Kell, 35.

407 W. Kymlicka (2000a), 207.

408 *Ibid.*, 213.

409 W. Kymlicka (2001), 113.

the process of nation-building in Western Europe and other parts of the world has been dominated by negative actions towards minorities, Liberal Nationalists argue that nation-building and the nation-state require a new definition in the light of the existence of minority nations within the borders of a nation-state.¹² The core demand of Liberal Nationalists is, therefore, that the state ‘protect[s] and promote[s] the national cultures and languages of the nations within its borders.’¹³

Will Kymlicka¹⁴ describes nine core elements of Liberal Nationalism:

1. The promotion of a common national identity within the multi-nation state.
2. The existence of a more expansive private sphere and a more restrictive public sphere to allow cultural differences.
3. The guaranteed freedom of political and cultural expression.
4. An open concept of national community.
5. A thin concept of national identity.
6. The nation itself is not the supreme value.
7. The state is cosmopolitan, open and respectful towards diversity.
8. The national identity is inclusive instead of exclusive; common values dominate the identification instead of a common nationality.
9. Minority nations are publicly recognised.

The arguments of Liberal Nationalism rest on the assumption that the promotion of diversity itself becomes a core value. Usually, authors refer to two core reasons why minority nations should be protected. These tend to be (1) the protection of minority nations and recognised national minorities is part of the protection of individuals and their identities through group affiliation and (2) the protection of minority nations and national minorities allows greater universal justice, both within the borders of the multinational state and as a universal principle.¹⁵

If the promotion and the acceptance of national diversity within a state is a core value in itself, and if, therefore, the inclusion and respect of national diversity becomes a key state goal, the question that follows is: How can such an inclusion

Cambridge University Press, Cambridge 2001, pp. 299–318. When referring to the rights of minorities, we mean the rights of nations within a state, often these are minority nations. However, in Bosnia we cannot speak of minority nations as such, as constitutionally the three main Bosnian nations are recognised as “constituent peoples” whilst there are also a number of recognised national minorities in Bosnia. These national minorities are, however, marginalised in the political system, as Chapter 4 will demonstrate.

12 Kymlicka, Will: ‘Nation-building and Minority Rights: Comparing West and East’ in: *Journal of Ethnic and Migration Studies*, Vol. 26, No. 2, April 2000, pp. 183–212, here p. 187.

13 Kymlicka, Will: *Politics in the Vernacular (Nationalism, Multiculturalism and Citizenship)*, Oxford University Press, Oxford and New York 2001, p. 39.

14 Kymlicka, Will: ‘Nation-building and Minority rights’, 2000, pp. 196–9.

15 ‘Nationalism’ in: Stanford Encyclopedia of Philosophy, here used. Online version: <http://plato.stanford.edu/entries/nationalism> (accessed 15th February 2013).

be guaranteed? Liberal Nationalists are not fully clear about the inclusion of minorities, but Tamir and Kymlicka see cultural and territorial autonomy as the best solution to this key question.¹⁶ Federalism provides such a form of cultural and territorial autonomy and offers the additional benefit of guaranteeing the inclusion of a given minority nation in decision-making at the (federal) state level.

Consociationalism

Consociational democracy has become the second important concept of the implementation of democracy in a divided society. Whilst Liberal Nationalism is, in its nature, normative, consociationalism consists of both normative and empirical elements.¹⁷ As Arend Lijphart, the most important scholar on consociationalism, argues, '[u]nder the unfavourable circumstances of segmental cleavages,¹⁸ consociational democracy, though far from the abstract ideal, is the best kind of democracy that can realistically be expected.'¹⁹ Consociationalism is characterised by four major elements, two of them identified as of core importance, namely grand coalition and segmental autonomy, and two secondary attributes, proportionality and minority veto.²⁰ Grand Coalition refers here to a situation in which the 'political leaders of all the significant segments²¹ of the plural society cooperate [...] to govern the country.'²² This feature already demonstrates two core problems of consociational theory.

First, Daniel Elazar argues that the focus on elite cooperation creates the necessity of a hierarchical structure of society.²³ This hierarchical structure of society then leads to questions of the accountability of the elites and their legitimacy. A second problem arising from the need for elite grand coalitions is that it discriminates against all those segments of society that might argue for an end of segmental division. Thus, inclusive forces addressing the society as a whole, and not its different segments, might be marginalised whilst, on the other side, extremists addressing only the selected segments will be strengthened. Whilst Lijphart admits that

¹⁶ Kymlicka, Will: 'Nation-building and minority rights', 2000, p. 189 and Tamir, Yael: *Liberal Nationalism*, 1993, p. 151.

¹⁷ Lijphart, Arend: *Democracy in Plural Societies (A Comparative Exploration)*, Yale University Press: New Haven and London 1977.

¹⁸ Lijphart refers to segmental cleavages as political divisions along religious, ideological, linguistic, regional, cultural, racial, or ethnic lines. Compare: *Ibid.* pp. 3-4.

¹⁹ *Ibid.* p. 48.

²⁰ Lijphart, Arend: 'Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories' in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 3-15, here p. 4.

²¹ Segments are defined by Lijphart as the conflicting groups, for the purposes of this discussion we can treat segments and national groups as synonyms.

²² Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 25.

²³ Elazar, Daniel: 'Federalism and Consociational Regimes', in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 17-34, here p. 32.

manjinskih naroda u okviru granica nacionalne države.⁴⁰³ Stoga „argumenti liberalnog nacionalizma počivaju na pretpostavci da promovisanje različitosti kao takve postaje suštinska vrednost.“⁴⁰⁴ Postavlja se, međutim, pitanje: ako poštovanje i promovisanje različitosti postaje jedan od glavnih ciljeva države, koji su instrumenti i garancije za ostvarenje takvog cilja. I Tamir i Kimlika vide kulturnu i teritorijalnu autonomiju kao najbolji odgovor na postavljeno pitanje.⁴⁰⁵ Kajl dodaje da „federalizam pruža takav oblik kulturne i teritorijalne autonomije i nudi dodatnu korist garantujući uključivanje određene manjinske nacije u donošenje odluka na (federalnom) državnom nivou.“⁴⁰⁶ Taj oblik državnog uređenja predstavlja, dakle, dobar okvir za ostvarivanje koncepta liberalnog nacionalizma.

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Takvi stavovi u suštini otkrivaju i potencijalnu opasnost teorijskog koncepta liberalnog nacionalizma – taj koncept, prena kojem se manjinskim narodima u federaciji priznaje širok dijapazon kolektivnih prava, ne isključujući nužno čak ni pravo na otepljenje, može biti koban po opstanak višenacionalnih federacija. On, drugim rečima, u sebi sadrži klicu za dezintegraciju federalne zajednice, pa je njegovo uspešno funkcionisanje neizvesno čak i u zemljama sa visokim nivoom demokratske političke kulture i ekonomskog razvoja.

403 Will Kymlicka, „Nation-building and Minority Rights: Comparing West and East“, *Journal of Ethnic and Migration Studies* 26, 2/2000, 187. Autor navodi čak devet elemenata liberalnog nacionalizma (*ibid.*, 196–199).

404 S. Kel, 34.

405 V. Tamir, 151; W. Kymlicka (2000b), 189.

406 S. Kel, 35.

407 W. Kymlicka (2000a), 207.

408 *Ibid.*, 213.

409 W. Kymlicka (2001), 113.

Federalism in Multinational States

Both Liberal Nationalism and consociational democracy offer forms of accommodating diversity within the settings of a liberal democratic state. Both theories highlight the importance of autonomy for different nations within one state in questions of identity, culture and language. Both theories demonstrate that the application of federalism would be a useful tool to guarantee autonomy while, at the same time, promoting participation in central institutions. Will Kymlicka, as a representative of the Liberal Nationalist school, argues: “[w]here national minorities form clear majorities in their historic homelands, and particularly where they have some prior history of self-government, it is not clear that there is any realistic alternative to TA [Territorial Autonomy S. K.] or multinational federalism.”³⁹

From Liberal Nationalism to Multinational Federalism

Multinational federalism refers to the intention ‘to accommodate the desire of national minorities for self-government, principally by creating a province (or provinces) in which one or more minority groups can constitute a clear majority of the citizens and in which they can exercise a number of sovereign powers.’³⁰ Thus, we see the direct link between the Liberal Nationalist claim of minority self-determination and multinational federalism. Furthermore, Kymlicka has demonstrated the connection between Liberal Nationalism and multinational federalism and argues that “[o]ver the past thirty years, Western democracies have developed a number of interesting, and [...] effective models for accommodating ethnocultural diversity. One of these models involves the use of federal [...] forms of territorial autonomy to enable self-government for national minorities and indigenous peoples.”³¹ Multinational federalism, Kymlicka argues, promotes the liberal values of peace and individual security, democracy, individual rights, economic prosperity and inter-group equality in the multinational polity.³² Even more importantly, “[d]emocratic federalism has domesticated and pacified nationalism, whilst respecting individual rights and freedom.”³³

Whilst generally positive about the potential of federalism as a tool of conflict-management in divided societies, Kymlicka argues that the introduction of federalism in multinational states was not the end of discussions about secession

29 Kymlicka, Will: ‘Federalism and Secession: At Home and Abroad’ in: *Canadian Journal of Law and Jurisprudence*, Vol. 13, No. 2, July 2000, pp. 207–24, here p. 217.

30 Norman, Wayne: *Negotiating Nationalism (Nation-Building, Federalism, and Secession in the Multinational State)*, Oxford University Press: New York and Oxford 2006, pp. 87–8.

31 Kymlicka, Will: ‘Federalism and Secession’, 2000, p. 207.

32 *Ibid.* pp. 212–13.

33 *Ibid.* p. 213.

in multinational states, but instead ³³recognizes and affirms the sense of national identity amongst the minority group³⁴ and, therefore, ³⁵secession becomes more conceivable and a more salient option, even with the best-designed federal institutions.³⁴ Therefore, it is important to point out that federalism provides neither an answer to all relevant questions in multinational states nor does its implementation lower the demand for further autonomy and secession.

The "Canadian School" of Multinational Federalism³⁵

The combination of Liberal Nationalist thinking and its practical application in a multinational federation was first discussed in Canada. To date, the literature about normative debates on multinational federalism demonstrates a clear dominance of authors who take Canada as their prime example to explain the relationship of democracy, federalism and nationalism.³⁶

The first contribution develops out of the arguments of the Liberal Nationalism School. Will Kymlicka argues that Canada needs ³⁷to find some form of asymmetrical multinational federalism.³⁷ He refers to Canada as a ³⁸federation of peoples³⁸ and the importance of ³⁹national recognition³⁹ for the Québécois.³⁸ In short, starting from the argument of self-determination and self-expression of national minorities (and in other works he also includes indigenous peoples in Canada³⁹), Kymlicka highlights the importance of recognising national diversity, self-government for the different nations in Canada and asymmetrical

³⁴ Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

³⁵ By referring to a "Canadian School" I am aware that not all authors who will be mentioned are native Canadians nor work in Canada. However, their communality is their interest in the Canadian polity as a form of multinational federation.

³⁶ Among others, see the above mentioned works by Kymlicka, as well as: Kymlicka, Will: *The Rights of Minority Cultures*, Oxford University Press: Oxford 1995; Kymlicka, Will and Ian Shapiro (Ed): *Ethnicity and Group Rights*, New York University Press: New York and London 1997; Kymlicka, Will and Magda Opalski: *Can Liberal Pluralism be Exported? (Western Political Theory and Ethnic Relations in Eastern Europe)*, Oxford University Press: Oxford and New York 2001; Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, Cambridge University Press: Cambridge 2001; Taylor, Charles: *Reconciling the Solitudes*, 1993; Tully, James: *Strange Municipality (Constitutionalism in an age of diversity)*, Cambridge University Press: Cambridge 1995 (here used 7th reprint 2006); Keating, Michael and Gagnon, Alain (Ed): *Political Autonomy and Divided Societies*, Palgrave MacMillan: Basingstoke 2012.

³⁷ Kymlicka, Will: "Multinational Federalism in Canada: Rethinking the Partnership" in: *Policy Options*, March 1998, pp. 5–9, here p. 9. See also his arguments in: Kymlicka, Will: *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, Oxford University Press: Oxford and New York 1998.

³⁸ *Ibid.* p. 5 and p. 8

³⁹ Kymlicka, Will: *Politics in the Vernacular*, 2001, especially chapter 6.

b) *Konsocijativna demokratija*. Drugi koncept za postizanje ravnoteže u višenacionalnim društvima je konsocijativna demokratija, odnosno postojanje tzv. konsocijativnih mehanizama u ustavnom uređenju. Arend Lijphart (*Arend Lijphart*) tvori je i najznačajniji zagovornik takvih mehanizama u rešavanju problema u heterogenim, a pre svega u višenacionalnim federacijama. Prema njegovom mišljenju, konsocijativna demokratija je daleko od apstraktnog ideala demokratije, ali je najbolja vrsta demokratije koja se u realnosti može očekivati.⁴¹⁰ On tvrdi da postoje dva primarna i dva sekundarna obeležja konsocijativnog pristupa rešavanju konflikata. Primarna obeležja su podela izvršne vlasti (formiranje tzv. velike koalicije) i grupna autonomija, a sekundarna su proporcionalnost i uzajamni veto.⁴¹¹ Podela izvršne vlasti podrazumeva da u izvršnim organima budu zastupljeni predstavnici svih etničkih grupa i svih relevantnih političkih stranaka kako bi se na taj način međusobno kontrolisali, pri čemu jače grupe ne mogu da odlučuju nauštrb interesa slabijih jer svaka od njih raspolaže pravom veta. Tako zamišljena egzektivna, dakle, odluka donosi konsenzusom. Danijel Elazar je oštro kritikovao to rešenje, zamatrajući mu, pre svega, nedostatak odgovornosti i nedostatak legitimnosti.⁴¹² S druge strane, grupna autonomija podrazumeva davanje „najvećeg mogućeg“ nivoa autonomije u odlučivanju različitim etničkim zajednicama, „vršenjem vlasti manjine nad sobom samom u oblastima od isključivog manjinskog interesa“.⁴¹³ Treće obeležje, proporcionalnost, podrazumeva da javne funkcije i fiskalni resursi budu raspodeljeni u skladu sa brojnošću i snagom svake pojedinačne grupe, odnosno da sve etničke grupe budu zastupljene u javnim službama srazmerno svojoj brojnosti u stanovništvu. Konačno, svaka grupa treba da raspolaže pravom veta, koji predstavlja negativno pravilo manjine i odnosi se na zaštitu vitalnih interesa manjinskih nacija kao potpunog jemstva političke zaštite.⁴¹⁴ Konsocijativni pristup se može primenjivati i na federalnom nivou, ali i na nivou federalnih jedinica, odnosno na regionalnom nivou, gde takođe može dati značajne rezultate.

Konsocijativna demokratija, sasvim je jasno, nudi određene mehanizme za rešavanje problema različitosti u demokratskim društvima. Nesporno je da jedan od glavnih elemenata konsocijativnih mehanizama predstavlja donoše-

410 Arend Lijphart, *Democracy in Plural Societies (A Comparative Exploration)*, New Haven - London 1977, 48.

411 Arend Lijphart, „The Wave of Power-Sharing Democracy“, *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (ed. A. Reynolds), Oxford 2002, 38–39.

412 Daniel Elazar, „Federalism and Consociational Regimes“, *Publius: The Journal of Federalism* 15, 2/1985, 32.

413 A. Lijphart (1977), 41.

414 *Ibid.*, 36–37. Taj element se može kritikovati jer donosi opasnost od blokade institucija, ali Lijphart uzvraća argumentom da je veto uzajamni i da ga nijedna grupa ne bi koristila neopravišano, pre svega iz „straha od osvetne“.

be guaranteed? Liberal Nationalists are not fully clear about the inclusion of minorities, but Tami and Kymlicka see cultural and territorial autonomy as the best solution to this key question.¹⁶ Federalism provides such a form of cultural and territorial autonomy and offers the additional benefit of guaranteeing the inclusion of a given minority nation in decision-making at the (federal) state level.

Consociationalism

Consociational democracy has become the second important concept of the implementation of democracy in a divided society. Whilst Liberal Nationalism is, in its nature, normative, consociationalism consists of both normative and empirical elements.¹⁷ As Arend Lijphart, the most important scholar on consociationalism, argues, „[u]nder the unfavourable circumstances of segmental cleavages,¹⁸ consociational democracy, though far from the abstract ideal, is the best kind of democracy that can realistically be expected.“¹⁹ Consociationalism is characterised by four major elements, two of them identified as of core importance, namely grand coalition and segmental autonomy, and two secondary attributes, proportionality and minority veto.²⁰ Grand Coalition refers here to a situation in which the ‘political leaders of all the significant segments’²¹ of the plural society cooperate [...] to govern the country.²² This feature already demonstrates two core problems of consociational theory.

First, Daniel Elazar argues that the focus on elite cooperation creates the necessity of a hierarchical structure of society.²³ This hierarchical structure of society then leads to questions of the accountability of the elites and their legitimacy. A second problem arising from the need for elite grand coalitions is that it discriminates against all those segments of society that might argue for an end of segmental division. Thus, inclusive forces addressing the society as a whole, and not its different segments, might be marginalised whilst, on the other side, extremists addressing only the selected segments will be strengthened. Whilst Lijphart admits that

16 Kymlicka, Will: ‘Nation-building and minority rights’, 2000, p. 189 and Tami, Yael: *Liberal Nationalism*, 1993, p. 151.

17 Lijphart, Arend: *Democracy in Plural Societies (A Comparative Exploration)*, Yale University Press: New Haven and London 1977.

18 Lijphart refers to segmental cleavages as political divisions along religious, ideological, linguistic, regional, cultural, racial, or ethnic lines. Compare: *Ibid.* pp. 3–4.

19 *Ibid.* p. 48.

20 Lijphart, Arend: ‘Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories’ in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 3–15, here p. 4.

21 Segments are defined by Lijphart as the conflicting groups, for the purposes of this discussion we can treat segments and national groups as synonyms.

22 Lijphart, Arend: *Democracy in Plural Societies*, 1977, p. 25.

23 Elazar, Daniel: ‘Federalism and Consociational Regimes’, in: *Publius: The Journal of Federalism*, Vol. 15, No. 2, Spring 1985, pp. 17–34, here p. 32.

consociationalism will result in further divisions in the short term, he, nevertheless, promotes it as a long-term solution to stability in divided societies. However, as will be seen in chapters four and five, the focus on strict power-sharing mechanisms has been a key problem in Bosnia and Herzegovina, not only because it has slowed down political progress, but also because it has contributed to the continuation of a permanent conflict amongst the three national groups.

The second core feature of consociationalism refers to segmental autonomy. Lipjhart defines this as a form of 'rule by the minority over itself in the area of the minority's exclusive concern'.²⁴ He refers to a decentralised decision-making process in which 'the decisionmaking is delegated to the separate segments as much as possible'.²⁵ One method of decentralising decision-making is federalism. However, it only applies to those consociational democracies which have their segmental cleavages territorialised and the different segments live isolated from each other.²⁶

The third characteristic of consociationalism is proportionality. Proportionality refers to proportional representation of the major segments of the society in the civil service, as well as proportional spending of subsidies and the proportional influence of the segments in the decision-making process.²⁷

The importance of proportionality is completed by the fourth feature of consociationalism, namely mutual veto rights. This represents negative minority rule²⁸ and refers to the protection of a minority nation's vital interests as a 'complete guarantee of political protection'.²⁸ It could be argued that a veto right for each segment of society will result in obstruction and deadlocks. Lipjhart argues against this by pointing out that the veto is mutual, thus everyone abusing it must fear revenge; furthermore, the sheer existence of the right to veto gives security to minority nations.

In conclusion, consociational democracy offers important features to manage diversity within a democratic framework. However, the features mentioned above raise many questions. In a multinational state, consensual decision-making is of key importance. The different nations within a state need to be included in the decision-making process at central level and they need to be provided, where possible, with territorial and cultural autonomy. The ideas of shared-rule and self-rule as the basis of federalism, therefore, go hand-in-hand with consociationalism in multinational states. Whilst federalism focuses on the territorial distribution of power in a multinational state, consociational elements ensure the participation of minority nations in decisions taken at the central level. Rather than seeing them as conflicting or one supreme over the other, they are two sides of the same coin, as will be demonstrated below in the case of Bosnia and Herzegovina.

²⁴ Lipjhart, Arend: *Democracy in Plural Societies*, 1977, p. 41.

²⁵ Lipjhart, Arend: 'Non-Majoritarian Democracy', 1985, p. 4.

²⁶ Lipjhart, Arend: *Democracy in Plural Societies*, 1977, p. 42.

²⁷ Ibid. pp. 38–9.

²⁸ Ibid. pp. 36–7.

nije odluka konsenzusom. Različite nacije unutar države moraju biti uključene u proces donošenja odluka na centralnom nivou i moraju imati, gde je to moguće, teritorijalnu i kulturnu autonomiju. Kako navodi Kalj, „dok se federalizam fokusira na teritorijalnu raspodelu vlasti u višenacionalnoj državi, konsocijativni elementi obebeđuju učeske manjinskih naroda u donošenju odluka na centralnom nivou.“⁴¹⁵ Iako neki pisci smatraju da ideje federalizma idu ruku pod ruku sa konsocijativnom demokratijom u višenacionalnim državama, mora se zapaziti da je donošenje odluka konsenzusom, iz kojeg proizilazi pravo veta u federalnom odlučivanju, u suštini karakteristično za konfederaciju, bez obzira na to što takvo pravo nije formalno vezano za federalne jedinice nego za nacionalne (manjinske) zajednice. Jer, u federacijama u kojima svaka nacija ima „svoju“ federalnu jedinicu (a to je uglavnom model koji zagovaraju pristalice višenacionalnog federalizma) između nacija i federalnih jedinica stoji znak jednakosti. Samim tim, ako svaka manjinska nacija ima pravo veta u odlučivanju, s jedne strane, i sopstvenu federalnu jedinicu, s druge strane, sasvim je svesjedno da li je formalni titular prava veta nacionalna zajednica ili federalna jedinica.

Taj oblik demokratije ima još nekih slabosti, a najčešće se osporava zbog nedostataka demokracije, nestabilnosti vlade i elitizma. Nedostatak demokracije tog modela posledica je prirodne (ali i prisilne) homogenizacije u okviru grupa (nacionalnih, jezičkih, verskih), odnosno pritiska na manjinu u grupi da se prikloni stavovima većine, kako bi se celokupna grupa na nivou države izborila za bolju poziciju. Na taj način se sprečava politička diferencijacija građana u grupi i negira se načelo političkog pluralizma u njoj. Osim toga, glomazne „velike koalicije“ su uvek veoma heterogene, sporo i teško donose odluke, pri čemu je, usled postojanja prava veta među društvenim grupama, nekada nemoguće doneti odluku, što neizbežno uzrokuje krize vlade. Konačno, elitizam konsocijativne demokratije ogleda se u tome što je njena suština u pregovaranju i usaglašavanju između političkih elita koje predstavljaju društvene grupe. To je, doduše, slabost svakog oblika demokratije, ali u konsocijativnoj posebno dolazi do izražaja.

Ukratko, konsocijativna demokratija u svom čistom obliku svodi čoveka na pripadnika samo jedne društvene grupe i protežira samo jedan njegov interes – onaj koji proizilazi iz pripadnosti grupi. Upravo zbog toga je najbolje izbeći čistu konsocijativnu demokratiju u ustavnom uređenju i kombinovati je sa predstavničkom, odnosno u ustavni sistem treba ugraditi valjane konsocijativne mehanizme, kako bi se postigla tri rezultata: prvo, onemogućavanje dominacije većinske društvene grupe („tiranija većine“), drugo, sprečavanje destabilizacije institucija zbog stalne upotrebe veta manjinskih grupa („tiranija manjine“), i treće, izbegavanje svodenje građana isključivo na pripadnike nacionalnih, jezičkih ili verskih grupa.

415 S. Kalj, 36.

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24 Lipjhart, Arend: *Democracy in Plural Societies*, 1977, p. 41.

25 Lipjhart, Arend: 'Non-Majoritarian Democracy', 1985, p. 4.

26 Lipjhart, Arend: *Democracy in Plural Societies*, 1977, p. 42.

27 Ibid. pp. 38-9.

28 Ibid. pp. 36-7.

jezičke zajednice često bili na strani gubitnika na referendumima u Švajcarskoj, naročito kada se odlučivalo o pitanjima od suštinskog strateškog značaja za tu zemlju. Dobar primer takvog slučaja je referendum o pristupanju Evropskom ekonomskom prostoru (*European Economic Area*) održan 1994. godine, koji je mogao da predstavlja presudan korak u pristupanju Švajcarske Evropskoj uniji. Tesna većina od 50,3%, odnosno 19 kantona, odbila je takvu mogućnost uprkos tome što je oko dve trećine frankofonih Švajcaraca glasalo za pristupanje. Ipak, federalne vlasti su zbog bojazni od stvaranja podela po jezičkoj osnovi pokrenule značajne infrastrukturne projekte u nerazvijenim područjima i, s druge strane, sa Evropskom unijom postigle dogovor o nešto restriktivnijoj formi ekonomske saradnje, koji je kasnije i potvrđen na referendumu održanom 2000. godine.⁴²² To je upravo dokaz da švajcarska politička elita vodi računa o heterogenosti svog društva, „što dovodi do spredele, da prihvataju zahteve drugih društvenih grupa, da se angažuju na aktivnostima koje vode pomirenju i da pronalaze politička rešenja koja ublažavaju nezadovoljstva.“⁴²³

Nasuprot Belgiji i Švajcarskoj, u Španiji ne postoje konsocijativni mehanizmi, pa tzv. istorijske autonomne zajednice (Katalonija, Baskija, Galicija) ne uživaju posebnu zaštitu u centralnim državnim organima. To je, nažalost, logična posledica fikcije o jedinstvenoj španskoj naciji koju sadrži španski Ustav od 1978. godine (čl. 2).

d) *Teorijski stavovi o primeni liberalnog nacionalizma i konsocijativne demokratije u višenacionalnim federacijama.* Postavke o liberalnom nacionalizmu i konsocijativnoj demokratiji kao rešenju za probleme u višenacionalnim federacijama nailaze na različite odjeke u nauci, a sva shvatanja se uglavnom mogu podeliti u tri grupe.⁴²⁴ Prva grupa autora smatra da su ti koncepti primenjivi u svim državama, čak i onima u kojima nije do kraja sproveden proces demokratizacije. Druga grupa pisaca tvrdi da liberalni nacionalizam ne može biti osnovna sistematske teorije federalizma u podeljenim društvima i umesto toga predlaže različite pristupe koji su fokusirani na izgradnju države, demokratizaciju i jačanju nacionalnog identiteta u višenacionalnim državama. Treća grupa autora uglavnom negira primenljivost federalizma u višenacionalnim društvima uopšte i umesto toga zagovara jake unitarne države ili stvaranje više država, otvoreno podržavajući mogućnost secesije. Samim tim, oni negiraju i liberalni nacionalizam i konsocijativnu demokratiju kao mehanizme za postizanje ekvilibriuma u takvim federacijama. Dakle, dok prve dve grupe autora zadržavaju koncept višenacionalnog federalizma, pri čemu druga grupa vodi u pitanje njegovu zasnovanost na vrednostima liberalnog nacionalizma,

⁴²² Vid. W. Svendsen (2006), 262.

⁴²³ André Bächtiger, Jürg Steiner, Switzerland: Territorial Cleavage Management, *Federalism and Territorial Cleavages* (eds. U. M. Amoretti, N. Bermeo), Baltimore 2004, 47.

⁴²⁴ *Ibid.*, 40.

Whilst the application of the above arguments to Bosnia might not be without its problems, since Canada and Bosnia are very different political systems with very different histories, there are, nevertheless, some important lessons to be learnt from the Canadian School. In particular, the link between federalism as a tool of conflict-management in democratic societies for the accommodation of national diversity is directly applicable to Bosnia. Furthermore, the institutional suggestions focusing on asymmetry and veto rights for the different nations within a multinational state have also been applied in Bosnia.

Multinational Federalism Revisited

As has been demonstrated previously, the argument of the Canadian School follows closely the conceptions of Liberal Nationalism. This view has been questioned over the last years and its critics can be categorised into three groups:

1. Authors who agree with the values of Liberal Nationalism but expand its application to countries other than Canada and also to countries which are still democratising.
2. Authors who argue that Liberal Nationalism cannot be the basis of a systematic theory of federalism in divided societies and instead suggest different approaches that focus on state-building, democratisation and the strengthening of "national" identity in multinational states.
3. Authors who generally deny the applicability of federalism in diverse societies and instead either argue for strong unitary states or for the creation of multiple states. They argue strongly for the possibility of secession.

Whilst the first two groups of authors retain the concept of "multinational federalism" but question its foundation on the values of Liberal Nationalism, the third group of authors argues that federalism will have no or very little success in diverse societies. They argue that, especially in the context of democratisation and after ethnic conflicts, federalism cannot be seen as an argument for creating "unity in diversity" but instead strengthens nationalist parties and, therefore, supports secessionist movements and further conflicts.⁴⁴

Ferran Requejo and Rainer Bauböck can be seen as authors belonging to the first category. Both authors built their arguments on the normative framework of Liberal Nationalism. However, they expand their arguments to other federations

⁴⁴ Authors of this school of thought are often debating the broader issues of democratisation and state-building. Their criticisms focus on outside state-building, which has neither a consensus between the governed nor the acceptance of the society in question. See, for example: Fukujama, Francis: 'Stateness First' in: *Journal of Democracy*, Vol. 16, No. 1, January 2005, pp. 84–8. Since it is our aim to develop a useful theory of multinational federalism, we will not analyse the arguments of these authors in detail. However, we will refer to parts of their criticism.

treća grupa autora tvrdi da federalizam ne može imati ili može imati vrlo malo uspeha u višenacionalnim društvima. Ti autori tvrde da se, posebno u kontekstu demokratizacije i nakon etničkih sukoba, federalizam ne može promatrati kao argument za stvaranje „jedinstva u različitosti“ jer on jača nacionalističke stranke i stoga podržava secesionističke pokrete i dalje sukobe.

Predstavnici prve grupe mišljenja su, osim više puta spomenutih Zereña Kajla i Vila Kimlike, i Feran Rakuejo (*Ferran Requejo*) i Rajner Baubek (*Rainer Bauböck*). Zeren Kajl navodi da „i liberalni nacionalizam i konsocijativna demokratija nude oblike prilagodavanja različitosti u okviru liberalne demokratske države“⁴²⁵ i da se u obe teorije ističe važnost autonomije različitih nacija u jednoj državi u pitanjima identiteta, kulture i jezika i da obe pokazuju da je primena federalizma valjan okvir za garantovanje autonomije manjinskih naroda. Stoga Vil Kimlika, kao jedan od najpoznatijih predstavnika škole liberalnog nacionalizma, dodaje da „tamo gde nacionalne manjine formiraju jasne većine u svojim istorijskim otadžbinama, a posebno tamo gde imaju neku prethodnu istoriju samouprave, nije jasno da li postoji neka realna alternativna teritorijalna autonomiji ili višenacionalnom federalizmu“.⁴²⁶

Feran Rakuejo i Rajner Baubek smatraju da se mehanizmi liberalnog nacionalizma i konsocijativne demokratije mogu primeniti na sve višenacionalne države, naročito aludirajući na države koje se i dalje „federalizuju“, kao što su Španija i Belgija, i, u manjem obimu, Italija i Ujedinjeno Kraljevstvo. Feran Rakuejo razvija teoriju „vrednosnog pluralizma“ (*value pluralism*) koja se odnosi na „veću sposobnost da se obezbedi oblik političkog liberalizma koji je osetljiviji na dobra, vrednosti i identitete nacionalnog i kulturnog pluralizma“.⁴²⁷ Rajner Baubek, s druge strane, govori o mogućnostima višenacionalnog federalizma, posebno asimetričnih aranžmana u višenacionalnim federacijama, o vrednosti slobode izbora, o novoj koncepciji jednakosti u federaciji i iznosi argument da je različitost sama po sebi vrednost koju treba očuvati.⁴²⁸ Oba autora se fokusiraju na važnost priznanja manjinskih naroda, kao i na njihovu autonomiju i participaciju u centralnim državnim institucijama. Oni se saglašavaju i o tome da je asimetrični federalizam važan i zagovaraju mogućnost secesije.⁴²⁹ Jasnno je da je većina tih stavova utopistička i preterana.

Zagovornici druge grupe mišljenja su Alfred Stepan i Nensi Bermeo, koji su, pišući o višenacionalnim federacijama, dali višestruki doprinos teoriji federalne države – njenom nastanku i prirodi, važnosti demokratije u federaciji, ali i stabilnosti federacije, njenoj ulozi u rešavanju sukoba i mogućnosti secesije. U opisu odnosa demokratije i federalizma u višenacionalnim

⁴²⁵ S. Keil, 37.

⁴²⁶ W. Kimlička (2000a), 217.

⁴²⁷ F. Requejo (2005), 15.

⁴²⁸ S. Keil, 41.

⁴²⁹ *Ibid.*

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Federalism in Multinational States

Both Liberal Nationalism and consociational democracy offer forms of accommodating diversity within the settings of a liberal democratic state. Both theories highlight the importance of autonomy for different nations within one state in questions of identity, culture and language. Both theories demonstrate that the application of federalism would be a useful tool to guarantee autonomy while, at the same time, promoting participation in central institutions. Will Kymlicka, as a representative of the Liberal Nationalist school, argues: “[w]here national minorities form clear majorities in their historic homelands, and particularly where they have some prior history of self-government, it is not clear that there is any realistic alternative to TA [Territorial Autonomy S. K.] or multinational federalism.”³⁹

From Liberal Nationalism to Multinational Federalism

Multinational federalism refers to the intention ‘to accommodate the desire of national minorities for self-government, principally by creating a province (or provinces) in which one or more minority groups can constitute a clear majority of the citizens and in which they can exercise a number of sovereign powers.’³⁰ Thus, we see the direct link between the Liberal Nationalist claim of minority self-determination and multinational federalism. Furthermore, Kymlicka has demonstrated the connection between Liberal Nationalism and multinational federalism and argues that “[o]ver the past thirty years, Western democracies have developed a number of interesting, and [...] effective models for accommodating ethnocultural diversity. One of these models involves the use of federal [...] forms of territorial autonomy to enable self-government for national minorities and indigenous peoples.”³¹ Multinational federalism, Kymlicka argues, promotes the liberal values of peace and individual security, democracy, individual rights, economic prosperity and inter-group equality in the multinational polity.³² Even more importantly, “[d]emocratic federalism has domesticated and pacified nationalism, whilst respecting individual rights and freedom.”³³

Whilst generally positive about the potential of federalism as a tool of conflict-management in divided societies, Kymlicka argues that the introduction of federalism in multinational states was not the end of discussions about secession

29 Kymlicka, Will: ‘Federalism and Secession: At Home and Abroad’ in: *Canadian Journal of Law and Jurisprudence*, Vol. 13, No. 2, July 2000, pp. 207–24, here p. 217.

30 Norman, Wayne: *Negotiating Nationalism (Nation-Building, Federalism, and Secession in the Multinational State)*, Oxford University Press: New York and Oxford 2006, pp. 87–8.

31 Kymlicka, Will: ‘Federalism and Secession’, 2000, p. 207.

32 Ibid. pp. 212–13.

33 Ibid. p. 213.

425 S. Keil, 37.

426 W. Kymlicka (2000a), 217.

427 E. Requejo (2005), 15.

428 S. Keil, 41.

429 Ibid.

including especially the “federalising” countries of Spain and Belgium and, to a lesser extent, Italy and the United Kingdom (UK). Bauböck justifies the strength of multinational federalism and, particularly, asymmetrical arrangements in multinational federations on the basis of the values of freedom of choice, a new conception of equality that allows special recognition, and the argument that diversity itself is a value to preserve.⁴⁵ In contrast, Requejo develops a theory of ‘value pluralism’⁴⁶ which refers to a ‘greater ability to provide a version of political liberalism that is more sensitive to the goods, values and identities of national and cultural pluralism.’⁴⁶ Value Pluralism is a defence of the ‘existence of a multiplicity of heterogeneous values’⁴⁷ and a focus on the liberal values of liberty, equality and individual dignity.⁴⁸ Both authors focus on the triad of recognition, autonomy/self-government and participation in the central institution for minority nations, all of which have already been discussed previously. They also share further arguments: they both agree on the importance of asymmetrical federalism; both argue for the possibility of secession and both focus on the importance of a plural citizenship conception, which allows minorities to identify with their national group as well as with the state in which they live in.⁴⁹

The second group of authors studies federalism in a different context. Whilst the Canadian School, Requejo and Bauböck debate their claims and arguments on the basis of the established democracies of Belgium, Canada and Spain, a second group of authors discuss federalism in the context of ethnic conflict, democratisation and conflict-management. We shall discuss the contributions of Alfred Stepan and Nancy Bermeo as important contributors to this group of authors.

Alfred Stepan and Nancy Bermeo have both contributed to the discussion of federalism in multinational states in three ways. First, they have contributed by conceptualising the origins and nature of federations. Second, both have argued for a strong connection of democracy and federalism in multinational states. Third, both have contributed to the discussion of stability, security, secession and the appropriateness of federalism as a tool in conflict-management.

45 Bauböck, Rainer: *United in Misunderstanding? Asymmetry in Multinational Federations*, IWE Working Paper No. 26, Austrian Academy of Sciences, Vienna, May 2002, available at: <http://cif.univie.ac.at/downloads/workingpapers/IWE-Papers/WP26.pdf> (accessed 15 February 2013), pp. 22–38.

46 Requejo, Ferran: *Multinational Federalism and Value Pluralism (The Spanish Case)*, Routledge: London 2005, p. 15.

47 Requejo, Ferran: ‘Value Pluralism and Multinational Federalism’ in: *Australian Journal of Politics and History*, Vol. 50, No. 1, 2004, pp. 23–40, here p. 25.

48 Requejo, Ferran: *Multinational Federalism*, 2005, p. 27.

49 Ibid, pp. 35–8. Bauböck, Rainer: *United in Misunderstanding?*, 2002, pp. 4–38, as well as: Bauböck, Rainer: *Multination Federalism: Territorial or Cultural Autonomy?*, Willy Brandt Series of Working Papers in International Migration and Ethnic Relations, No. 2, November 2001, available at: <http://dspace.mah.se:8080/bitstream/2043/690/1/Workingpaper201.pdf> (accessed 15 February 2013), pp. 3–15.

In a well known essay in the *Journal of Democracy*, Alfred Stepan introduced a concept important to the origins of federalism. He claimed that the Rikerian model of “federal bargaining” cannot explain the origin of several federations and introduced the concepts of “coming-together federalism” and “holding together federalism”. The former he described as the free association of formerly independent states (USA, Germany, and Switzerland) and the latter as the federalisation of a former unitary state (Belgium, Spain).⁵⁰ Furthermore, in his description of the relationship of democracy and federalism in multinational states, Stepan highlights the importance of the overrepresentation of minorities at the central level, the influence of the national groups in the upper chamber and the autonomy for the nations in their constituent unit.⁵¹ Although he refers to the debate of Liberal Nationalism and bases his arguments on the same values of equality between all national groups and the value of diversity itself, he points out that, in every multinational federation, there exists a conflict between individual rights, mostly protected by central institutions, e.g., a bill of rights, and group rights, protected by the constituent parts (for example, special language rights and bank holidays). This conflict is the reason why Liberal Nationalism, according to Stepan, cannot give an answer to the question of multinational federalism.⁵² Finally, Stepan makes a clear argument for the importance of federalism in multinational states: if multinational states want to establish a functioning democracy, they will have to take federal solutions into account.⁵³

The same argument is presented by Nancy Bermeo. Basing her analysis on statistical data of the *Minorities at Risk* project, she comes to the conclusion that federalism has contributed to a peaceful conflict-management in ethnically and nationally divided countries.⁵⁴ She presents federalism as a viable solution to societies that face ethnic conflicts and claims against critics that “it is historically inaccurate to argue that it [federalism S.K.] brings on separation.”⁵⁵ For her, the core of a functional federation in divided societies is the voluntary character of the federation; in fact a stable multinational democratic federation can only work if it is voluntary. “If political leaders are to adopt federalism voluntarily, they will have to know which institutional variations suit their countries best.”⁵⁶ She argues

⁵⁰ Stepan, Alfred: ‘Federalism and Democracy: Beyond the U.S. Model’ in: *Journal of Democracy*, Vol. 10, No. 4, 1999, pp. 19–34. He also introduces the concept of “putting together federalism” which refers to the forceful and non-democratic nature of a federation and he names the Soviet Union as an example.

⁵¹ Ibid. p. 24.

⁵² Ibid. pp. 30–2.

⁵³ Ibid. p. 24.

⁵⁴ Bermeo, Nancy: ‘The Import of Institutions’ in: *Journal of Democracy*, Vol. 13, No. 2, April 2002, pp. 96–110, here p. 99. Bermeo also introduces the category of “forced together federalism” which refers to the forced creation of a federal system by outsiders. This system lacks the core element of a “voluntary union.”

⁵⁵ Ibid. p. 107.

⁵⁶ Ibid. p. 108.

treća grupa autora tvrdi da federalizam ne može imati ili može imati vrlo malo uspeha u višenacionalnim društvima. Ti autori tvrde da se, posebno u kontekstu demokratizacije i nakon etničkih sukoba, federalizam ne može promatrati kao argument za stvaranje „jedinstva u različitosti“ jer on jača nacionalističke stranke i stoga podržava secesionističke pokrete i dalje sukobe.

Predstavnici prve grupe mišljenja su, osim više puta spomenutih Zereña Kajla i Vila Kimlike, i Feran Rakuejo (*Ferran Requejo*) i Rajner Baubek (*Rainer Bauböck*). Zeren Kajl navodi da „liberalni nacionalizam i konsociativna demokratija nude oblike prilagođavanja različitosti u okviru liberalne demokratske države“⁴²⁵ i da se u obe teorije ističe važnost autonomije različitih nacija u jednoj državi u pitanjima identiteta, kulture i jezika i da obe pokazuju da je primena federalizma valjan okvir za garantovanje autonomije manjinskih naroda. Stoga Vil Kimlika, kao jedan od najpoznatijih predstavnika škole liberalnog nacionalizma, dodaje da „tamo gde nacionalne manjine formiraju jasne većine u svojim istorijskim otadžbinama, a posebno tamo gde imaju neku prethodnu istoriju samouprave, nije jasno da li postoji neka realna alternativna teritorijalna autonomiji ili višenacionalnom federalizmu“.⁴²⁶

Feran Rakuejo i Rajner Baubek smatraju da se mehanizmi liberalnog nacionalizma i konsociativne demokratije mogu primeniti na sve višenacionalne države, naročito aludirajući na države koje se i dalje „federalizuju“, kao što su Španija i Belgija, i, u manjem obimu, Italija i Ujedinjeno Kraljevstvo. Feran Rakuejo razvija teoriju „vrednosnog pluralizma“ (*value pluralism*) koja se odnosi na „specu sposobnost da se obezbedi oblik političkog liberalizma koji je osjetljiviji na dobra, vrednosti i identitete nacionalnog i kulturnog pluralizma“.⁴²⁷ Rajner Baubek, s druge strane, govori o mogućnostima višenacionalnog federalizma, posebno asimetričnih aranžmana u višenacionalnim federacijama, o vrednosti slobode izbora, o novoj koncepciji jednakosti u federaciji i iznosi argument da je različitost sama po sebi vrednost koju treba očuvati.⁴²⁸ Oba autora se fokusiraju na važnost priznanja manjinskih naroda, kao i na njihovu autonomiju i participaciju u centralnim državnim institucijama. Oni se saglašavaju i o tome da je asimetrični federalizam važan i zagovaraju mogućnost secesije.⁴²⁹ Jasno je da je većina tih stavova utopistička i preterana.

Zagovornici druge grupe mišljenja su Alfred Stepan i Nensi Bermeo, koji su, pišući o višenacionalnim federacijama, dali višestruki doprinos teoriji federalne države – njenom nastanku i prirodi, važnosti demokratije u federaciji, ali i stabilnosti federacije, njenoj ulozi u rešavanju sukoba i mogućnosti secesije. U opisu odnosa demokratije i federalizma u višenacionalnim

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⁵¹ Ibid. p. 24.

⁵² Ibid. pp. 30–2.

⁵³ Ibid. p. 24.

⁵⁴ Bermeo, Nancy: ‘The Import of Institutions’ in: *Journal of Democracy*, Vol. 13, No. 2, April 2002, pp. 96–110, here p. 99. Bermeo also introduces the category of “forced together federalism” which refers to the forced creation of a federal system by outsiders. This system lacks the core element of a “voluntary union.”

⁵⁵ Ibid. p. 107.

⁵⁶ Ibid. p. 108.

⁴²⁵ S. Keil, 37.

⁴²⁶ W. Kymlicka (2000a), 217.

⁴²⁷ E. Requejo (2005), 15.

⁴²⁸ S. Keil, 41.

⁴²⁹ Ibid.

for the introduction of asymmetrical federalism to accommodate the different demands of different national groups, too. Finally, her arguments why federalism is a “merit” in multinational states go in the same direction, it allows national autonomy on the one side whilst providing inclusion in the central institutions on the other. Furthermore, it can enhance the political and economic participation of all national groups within the federation and therefore again refers to the Liberal Nationalist value of equality.⁵⁷

Finally, the third group of authors denies the applicability of federalism in a multinational and, particularly, in a post-conflict society. Coming from the background of conflict analysis, Chaim Kaufmann has become one of the most popular authors of this group. He argues that federalism will institutionalise conflicts that took place on the battlefield and will consequently lead to permanent blockade and a high risk of renewed inter-group violence. Instead, he suggests the possibility of secession and even population transfers, arguing that, in the long-term, this will lead to more stability and higher chances for a permanent absence of violence.⁵⁸ Whilst his conclusions might not be applicable to Bosnia, his discussion about federalism as a mechanism of institutionalising conflict is very relevant and important for Bosnia.⁵⁹

Donald Horowitz does not completely deny the applicability of federalism in multinational states, however, he argues strongly against the creation of homogeneous sub-units in the multinational federation. Instead, Horowitz argues for the creation of multinational regions that will enhance co-operation between the different national groups. Horowitz’ integrative concept is further strengthened by a preferential electoral system, which would favour moderate candidates and demand that representatives of different national groups must gain the support of representatives of other groups in order to be elected to public office. In a nutshell, Horowitz argues that the institutional framework of a multinational state should not enhance further separation but should enhance and favour co-operation between different national groups.⁶⁰

Where does this discussion about multinational federalism leave us? Multinational federalism, after all, remains a mainly descriptive term that refers to the implementation of a federal political system to “manage” different nations within one

⁵⁷ Bermeo, Nancy: ‘Conclusion: The Merits of Federalism’ in: Bermeo, Nancy and Amoretti, Ugo (eds): *Federalism and Territorial Cleavage*, John Hopkins University Press, Baltimore 2004, pp. 457–83.

⁵⁸ Kaufmann, Chaim: ‘When All Else Fails: Ethnic Population Transfers and Partition in the Twentieth Century’ in: *International Security*, Vol. 23, Nr. 2, Autumn 1998, pp. 120–56. Also: Kaufmann, Chaim: ‘Possible and Impossible Solutions to Ethnic Civil Wars’ in: *International Security*, Vol. 20, No. 4, Spring 1996, pp. 136–75.

⁵⁹ See the chapters “The Bosnian Federation” and “Federalism in Bosnia” for this discussion.

⁶⁰ Horowitz, Donald: *Ethnic Groups in Conflict*, 2nd edition, University of California Press, Los Angeles 2000.

državama, Stepan naglašava važnost prezastupljenosti manjina na centralnom nivou, uticaja nacionalnih grupa u federalnom domu i autonomije naroda u njihovoj federalnoj jedinici.⁴³⁰ Iako se poziva na raspravu o liberalnom nacionalizmu i svoje argumente zasniva na sličnim vrednostima (jednakosti svih nacionalnih grupa i vrednosti same raznolikosti), on ističe da u svakoj višenacionalnoj federaciji postoji sukob između individualnih prava, većinom zaštićenih od centralnih institucija, i grupnih prava, zaštićenih u federalnim jedinicama. Zbog tog konflikta, prema Stepanovom mišljenju, liberalni nacionalizam ne može efikasno da odgovori na probleme višenacionalnog federalizma. S druge strane, on smatra da višenacionalne države koje žele da uspostave funkcionalnu demokratiju moraju da uzmu u razmatranje federalno uređenje.⁴³¹ Slično argumentuje i Berneo, koja ističe da je federalizam u velikoj meri doprineo mirnom upravljanju sukobima u nacionalno podeljenim zemljama.⁴³² Ona predstavlja federalizam kao održivo rešenje za društva koja se suočavaju s etničkim konfliktima i tvrdi da je „istorijski netačno tvrditi da on (federalizam, M.S) donosi razdvajanje“⁴³³ Stoga, „ako politički lideri dobrovoljno usvoje federalizam, oni će morati da znaju koje institucionalne varijacije najbolje odgovaraju njihovim zemljama“⁴³⁴ Ona je pristalica asimetričnog federalizma, kako bi zahtevi svake nacionalne grupe bile zadovoljene na adekvatan način. Berneo smatra da je federalizam ključan u višenacionalnim državama, zato što omogućava nacionalnu autonomiju, s jedne strane, dok istovremeno obezbeđuje uključivanje u centralne institucije, s druge strane.⁴³⁵ Ona tvrdi da federalizam može poboljšati političko i ekonomsko učešće svih nacionalnih grupa u federaciji, pozivajući se na doktrinu liberalnog nacionalizma.⁴³⁶

Konačno, trećoj grupi mišljenja, kojim se negira mogućnost federalizma da reši probleme u višenacionalnim, a posebno postkonfliktnim društvima, pripadaju Kaim Kaufman (*Chaim Kaufmann*) i Donald Horovic (*Donald Horowitz*). Kaufman, kao jedan od najradikalnijih autora iz te grupe, tvrdi da će federalizam institucionalizovati sukobe koji su se odigrali na bojišnom polju, da će izazvati trajnu blokadu i visok rizik od ponovnog nasilja među grupama. Umesto toga, on sugerise mogućnost secesije, pa čak i transfera stanovništva, tvrdeći da će to dugoročno omogućiti veću stabilnost i veće šanse za trajno eliminisanje nasilja.⁴³⁷ Donald Horovic ne poriče potpuno primenljivost federalizma u višenacionalnim državama, ali se snažno protiviti stvara-

⁴³⁰ A. Stepan (1999), 24

⁴³¹ *Ibid.*, 30-32.

⁴³² N. Berneo (2002), 99.

⁴³³ *Ibid.*, 107.

⁴³⁴ *Ibid.*, 108.

⁴³⁵ Vid. N. Berneo (2004), 457-483.

⁴³⁶ S. Kell, 43.

⁴³⁷ Chaim Kaufmann, „When All Else Fails: Ethnic Population Transfers and Partition in the Twentieth Century“, *International Security* 23, 2/1998, 120-156.

for the introduction of asymmetrical federalism to accommodate the different demands of different national groups, too. Finally, her arguments why federalism is a “merit” in multinational states go in the same direction, it allows national autonomy on the one side whilst providing inclusion in the central institutions on the other. Furthermore, it can enhance the political and economic participation of all national groups within the federation and therefore again refers to the Liberal Nationalist value of equality.⁵⁷

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⁵⁹ See the chapters “The Bosnian Federation” and “Federalism in Bosnia” for this discussion.

⁶⁰ Horowitz, Donald: *Ethnic Groups in Conflict*, 2nd edition, University of California Press: Los Angeles 2000.

nju nacionalno homogenih federalnih jedinica u višenacionalnoj federaciji. Umesto toga, Horovic se zalaže za stvaranje multinacionalnih regiona koji će poboljšati saradnju između različitih nacionalnih grupa. Horovicov integrativni koncept dodatno je ojačan preferencijalnim izbornim sistemom, koji bi favorizovao umerene kandidate i zahtevao da predstavnici različitih nacionalnih grupa dobiju podršku predstavnika drugih grupa kako bi bili izabrani na javnu funkciju.⁴³⁸ Ukratko, Horovic tvrdi da institucionalni okvir višenacionalne države ne bi trebalo da pojačava dalje razdvajanje već treba da poboljša i favorizuje saradnju između različitih nacionalnih grupa.⁴³⁹ Taj autor navodi nekoliko slabih tačaka konsocijativnih mehanizama.⁴⁴⁰ Pre svega, konsocijativni pristup podrazumeva „državništvo“ (*statesmanship*), odnosno volju političkih predstavnika većinske zajednice (ili nacije), i na centralnom i na regionalnom nivou, da efektivno deli političku vlast sa predstavnicima manjinskih zajednica (nacija). Pritom, politički predstavnici većinske zajednice često nisu skloni da se prilagođavaju konsocijativnim mehanizmima, naročito kad pripadnici te grupe nemaju takvih sklonosti. Zatim, kompromisi koji se postižu u okviru organa u kojima funkcionišu konsocijativni mehanizmi mogu skupo koštati političke predstavnike većine jer opozicija može kritikama vlasti, a naročito kampanjom u kojoj nudi manje pomirljivu politiku, da pridobije veliki broj birača. Konačno, konsocijativni pristup prinuđuje na podelu političke vlasti nakon izbora, ali postojanje nacionalnih stranaka ili proporcionalni izborni sistem ne podstiču saradnju u predizbornoj areni. Zato „postoji značajna razlika između ponašanja partija u federalnoj predizbornoj kampanji i njihovog ponašanja u pregovorima o koaliciji“.⁴⁴¹ Stoga postojanje federalnih političkih stranaka koje ne zastupaju interese neke od grupa već se rukovode opštim interesima može biti od presudnog značaja. Drugim rečima, za stabilan federalni aranžman treba da postoji „integrativna“ partija, odnosno „partija u kojoj političari na jednom nivou vlasti imaju organizacioni odnos sa političarima na drugim nivoima, kao i sa političarima na svom nivou“.⁴⁴² Takve partije po pravilu imaju stav da je korist svakog federalnog subjekta približno jednake važnosti, pa stoga „preferiraju pravične raspodele koristi“.⁴⁴³ Razume se, integrativne partije se ne pojavljuju niotkuda niti su njihovo osnivanje i uspešno delovanje mogući u svakoj višenacionalnoj zajednici. U Belgiji se, smatra Horovic, čini logičnijim i lakšim potpuno ukidanje federalnih izbora i izbor federalnog parlamenta na regionalnim izborima nego navođenje jezičkih partija da ponovo udruže snage. Stvaranje dvojezič-

⁴³⁸ Donald L. Horowitz, *Ethnic Groups in Conflict*, 2nd ed., Los Angeles 2000, 682-683.

⁴³⁹ S. Keil, 43.

⁴⁴⁰ Donald L. Horowitz, „Constitutional Design: Proposals versus Processes“, *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (ed. A. Reynolds), Oxford 2002, 20-23.

⁴⁴¹ W. Swenden (2006), 285.

⁴⁴² M. Filippov, P. C. Ordeshook, O. Shvetsova, 188.

⁴⁴³ *Ibid.*, 190.

trašnjeg i međunarodnog prava,⁴⁷⁵ a „kao što se i očekivalo, Sud je u avgustu 1998. godine jednostranu secesiju proglasio suprotnom i kanadskom ustavnom pravu i međunarodnom javnom pravu.“⁴⁷⁶

Bez obzira na pomenute probleme i pokušaje secesije, Kanada se i dalje smatra jednim od najsvetlijih primera uspešnih višenacionalnih federacija. Postoje, ipak, i predlozi kako taj model treba unaprediti. „Kanadska škola“ višenacionalnog federalizma nastala je kao posledica činjenice da „literatura o normativnim debatama o višenacionalnom federalizmu pokazuje jasnu dominaciju autora koji uzimaju Kanadu kao svoj glavni primer da objasne odnos demokratije, federalizma i nacionalizma.“⁴⁷⁷ Jedan od najistaknutijih predstavnika te „škole“ je **Vil Kimlika, koji je neposredno nakon poslednjeg kvebečkog referenduma o nezavisnosti tvrdio da Kanada treba da pronade neki oblik asimetričnog višenacionalnog federalizma**⁴⁷⁸ jer je reč o **federaciji naroda**⁴⁷⁹ u kojoj poseban značaj ima **nacionalno priznanje za Kvebečane**.⁴⁷⁹ Kimlika ističe važnost prepoznavanja nacionalne raznolikosti, samouprave za različite nacije u Kanadi i asimetričnih aranžmana unutar federalne države, sve u skladu sa njegovim ranije iznetim stavovima o liberalnom nacionalizmu i konsocijativnoj demokratiji. Njegove teorijske postavke podržali su i drugi autori. Alan Ganjon (*Alan Gagnon*) tvrdi da posebno priznanje različitosti i samouprave manjinskih naroda u kombinaciji sa asimetričnim federalizmom doprinosi jednakosti i jačanju demokratije u višenacionalnoj državi.⁴⁸⁰ Vejn Norman se fokusira na slične normativne vrednosti tvrdeći da kada **identitet, pravda i stabilnost imaju jednake osnove u javnom razmatranju ustavnih pregovora, trebalo bi da postoje veće šanse da se pronadu prihvatljiva rešenja za sve strane**⁴⁸¹ Končno, Alan Paten (*Alan Patten*) ističe da je srž višenacionalnog federalnog sistema **pravo na jednako priznavanje identiteta u javnoj sferi**⁴⁸² Čarls Tejlor (*Charles Taylor*) doprineo je toj debati razvijanjem argumentacije o „novom obliku kanadske federacije“ koja bi formalno priznala „dvojnost kao osnovu za državu“⁴⁸³ U najkraćem, „različiti autori se fokusiraju na veze između normativnih vrednosti jednakosti, slobode i demokratske participa-

475 O tom mišljenju će biti više reči u sedmoj raspravi.

476 David Schneiderman, *The Quebec Decision: Perspectives on the Supreme Court Ruling on Secession*, Toronto 1999, 1.

477 S. Keil, 38.

478 W. Kymlicka (1998b), 9.

479 *Ibid.*, 8.

480 Alain Gagnon, „The Moral Foundation of Asymmetrical Federalism: A Normative Exploration of the Case of Quebec and Canada“, *Multinational Democracies* (eds. A. Gagnon, J. Tully), Cambridge 2001, 319–337.

481 Wayne Norman, „Justice and Stability in Multinational Societies“, *Multinational Democracies* (eds. A. Gagnon, J. Tully), Cambridge 2001, 108.

482 Alan Paten, „Liberal Citizenship in Multinational Societies“, *Multinational Democracies* (eds. A. Gagnon, J. Tully), Cambridge 2001, 282.

483 Charles Taylor, „Why do Nations have to become States?“, *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism* (ed. G. Laforest), London 1993, 57.

in multinational states, but instead **recognizes and affirms the sense of national identity amongst the minority group**³⁴ and, therefore, **secession becomes more conceivable and a more salient option, even with the best-designed federal institutions**.³⁴ Therefore, it is important to point out that federalism provides neither an answer to all relevant questions in multinational states nor does its implementation lower the demand for further autonomy and secession.

The “Canadian School” of Multinational Federalism³⁵

The combination of Liberal Nationalist thinking and its practical application in a multinational federation was first discussed in Canada. To date, the literature about normative debates on multinational federalism demonstrates a clear dominance of authors who take Canada as their prime example to explain the relationship of democracy, federalism and nationalism.³⁶

The first contribution develops out of the arguments of the Liberal Nationalism School. Will Kymlicka argues that Canada needs **to find some form of asymmetrical multinational federalism**.³⁷ He refers to Canada as a **federation of peoples**³⁸ and the importance of **national recognition**³⁹ for the Québécois.³⁸ In short, starting from the argument of self-determination and self-expression of national minorities (and in other works he also includes indigenous peoples in Canada³⁹), Kymlicka highlights the importance of recognising national diversity, self-government for the different nations in Canada and asymmetrical

34 Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

35 By referring to a “Canadian School” I am aware that not all authors who will be mentioned are native Canadians nor work in Canada. However, their communality is their interest in the Canadian polity as a form of multinational federation.

36 Among others, see the above mentioned works by Kymlicka, as well as: Kymlicka, Will: *The Rights of Minority Cultures*, Oxford University Press: Oxford 1995; Kymlicka, Will and Ian Shapiro (Ed): *Ethnicity and Group Rights*, New York University Press: New York and London 1997; Kymlicka, Will and Magda Opalski: *Can Liberal Pluralism be Exported? (Western Political Theory and Ethnic Relations in Eastern Europe)*, Oxford University Press: Oxford and New York 2001; Gagnon, Alain and James Tully (Ed): *Multinational Democracies*, Cambridge University Press: Cambridge 2001; Taylor, Charles: *Reconciling the Solitudes*, 1993; Tully, James: *Strange Multiplicity (Constitutionalism in an age of diversity)*, Cambridge University Press: Cambridge 1995 (here used 7th reprint 2006); Keating, Michael and Gagnon, Alain (Ed): *Political Autonomy and Divided Societies*, Palgrave MacMillan: Basingstoke 2012.

37 Kymlicka, Will: “Multinational Federalism in Canada: Rethinking the Partnership” in: *Policy Options*, March 1998, pp. 5–9, here p. 9. See also his arguments in: Kymlicka, Will: *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, Oxford University Press: Oxford and New York 1998.

38 *Ibid.* p. 5 and p. 8

39 Kymlicka, Will: *Politics in the Vernacular*, 2001, especially chapter 6.

arrangements⁴⁰ within the federal state. These demands have been met by the arguments of other authors: Alain Gagnon argues that special recognition of diversity and self-government of minority nations combined with asymmetrical federalism, contributes to equality and a stronger democracy within the multinational state.⁴¹ Wayne Norman focuses on similar normative values by arguing that when considerations of identity, justice and stability are all given equal footing in the public deliberation of constitutional negotiations there should be a greater chance of finding acceptable solutions for all parties.⁴² Finally, Alan Patten argues that the core of a multinational federal system is a right to equal recognition of identity in the public sphere.⁴³ Different authors focus on the links between the normative values of equality, liberty, and democratic participation and connect these to the values of communal identity, self-determination of minority nations and the right of recognition.

Furthermore, scholars of the “Canadian School” focused on practical suggestions for the implementation of recognition, self-government and participation. We have already discussed Gagnon’s and Kymlicka’s suggestions for asymmetrical federalism in Canada and the recognition of the Québécois as a constituent people. Additionally, we have seen that the demand for asymmetrical federalism does not only comprise some units having more decision-making powers than others, but also some units (those representing minority nations) having special veto rights in central institutions as well as reserved seats.

⁴⁰ Asymmetrical federalism can refer to different qualities of the multinational polity. All federations are characterised by a form of “natural” asymmetry, which refers to the difference in size, population, economic development and wealth of the constituent units in the federation. Secondly, a federal constitution can create differences between the constituent units in their relationship to each other and to the federal government. This form of asymmetry is characterised by an “unequal” distribution of power between the federal units and the federal government and between the federal units themselves. This distribution of power can include further self-governing rights for one or some units in comparison to others as well as further financial resources for one or some units (possibility to introduce additional taxation). It can, furthermore, refer to the possibility of different influence of the units at the centre. Often this form of asymmetry includes some form of asymmetrical voting rights in central institutions as well, for example, special minority veto rights. For further reference to asymmetrical federalism, see: Agranoff, Robert (ed.): *Accommodating Diversity: Asymmetry in Federal States*, Nomos: Baden Baden 1999.

⁴¹ Gagnon, Alain: ‘The Moral Foundation of Asymmetrical Federalism: A Normative Exploration of the Case of Quebec and Canada’ in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 319–37.

⁴² Norman, Wayne: ‘Justice and Stability in Multinational Societies’ in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 90–109, here p. 108 (in original in Italics).

⁴³ Patten, Alan: ‘Liberal Citizenship in Multinational Societies’ in: Gagnon, Alain and Tully, James (eds): *Multinational Democracies*, Cambridge University Press, Cambridge 2001, pp. 279–98, here p. 282.

je i status nacionalnih manjina u federaciji, odnosno u federalnim jedinicama. Tu postoji razlika u tretmanu i položaju nacionalnih manjina koje imaju „svoju“ federalnu jedinicu a čine manjinu u drugoj federalnoj jedinici i nacionalnih manjina koje nemaju „svoju“ federalnu jedinicu. Konačno, izvestan uticaj na uspešnost svake federacije, pa i višenacionalne, ima veličina i snaga federalnih jedinica, pa će i tom pitanju biti posvećena pažnja.

a) *Loyalnost*. Prema rečima Zereka Kajla, „državljanstvo i lojalnost su dva glavna faktora u višenacionalnim federacijama.“⁵⁸⁹ Shvatanje federalizma kao oblika minimalnog konsenzusa između različitih naroda podrazumeva lojalnost tih naroda prema njihovoj zajedničkoj državi. „Čini se“, primećuje Kajl, „da ovdje leži ključni problem višenacionalnih federacija, jer se u mononacionalnim državama oba oblika političke lojalnosti poklapaju i država predstavlja naciju.“⁵⁹⁰ Nasuprot tome, u višenacionalnim federacijama lojalnost prema svom narodu i lojalnost prema zajedničkoj državi mogu biti suprotstavljene. Zato je jedan od osnovnih elemenata višenacionalnih federacija tzv. plurinacionalni identitet (*plurinational identity*), koji svakom pojedincu omogućava da se identifikuje i sa svojom nacionalnom grupom i sa državom.⁵⁹¹

Neophodnost postojanja različitih nivoa identiteta i lojalnosti u okviru federacije ključni je faktor uspeha višenacionalnih federacija. Zbog toga je važna, a za opstanak višenacionalne federacije verovatno i neizbežna, izgradnja zajedničkog identiteta, koji će svakog građanina vezivati za federaciju kao zajedničku državu. Drugim rečima, u višenacionalnim federacijama je „potrebno da postoje najmanje dva sloja nacionalnog identiteta koji će se držati zajedno i raditi ispravno, tačnije, nacionalna identifikacija sa nacijom kojoj pripada i identifikacija sa zajedničkom državom.“⁵⁹² Sve nacije u višenacionalnoj federaciji moraju imati neki oblik povezivanja sa zajedničkom državom. Nepostojanje zajedničke vizije o državi i nedostatak bilo kakvog osećanja pripadnosti zajedničkoj državi rezultiraće pre ili kasnije dugoročnom političkom nestabilnošću i pitanjem spoljnog samoodređenja, to jest secesije.

Na pitanje kako stvoriti i podržati lojalnost svih nacija prema državi i razviti zajednički identitet može se odgovoriti na dva načina. Prvi način zagarantovano je u *Pjer Eliot Trudo (Pierre Elliott Trudeau)*, koji tvrdi da „celo građanstvo

589 S. Keil, 47. Pjer Eliot Trudo je tvrdio da savremena višenacionalna federalna država „svođi nacionalni konsenzus na najveći zajednički imenitelj između različitih grupa koje čine naciju.“ Vid. Pierre Elliott Trudeau, „Nationalism and Federalism“, *Theories of Federalism*, A Reader (eds. D. Karmis, W. Norman), London 2006, 221.

590 S. Keil, 47.

591 Ferran Requejo, *Multinational Federalism and Value Pluralism (The Spanish Case)*, London 2005, 72. „Priznavanje u multinacionalnim državama, dakle, odnosi se na priznavanje više od jednog nacionalizma, nacionalnog identiteta i konačno nacije“ (S. Keil, 46-47).

592 S. Keil, 47.

Nationalism in Multinational Federations

By now it should be clear that the main task of federalism and democracy in multinational states is the accommodation of 'sub-state nationalism, that is, the collective needs and requirements of the nation or nations that coexist within the larger, overarching nationality of the federation taken as a whole.'⁷⁰

Both federalism and democracy consist of accommodating qualities which can be summarised in the values of recognition, participation and self-government. However, the question that remains is how federalism and democracy affect nationalism. Will Kymlicka has more than once argued that '[d]emocratic federalism has domesticated and pacified nationalism.'⁷¹ Murray Forsyth, in his analysis of federalism and nationalism, came to the same conclusion.⁷² However, he also linked the 'success' of federalism as a tool of conflict-management⁷³ to other conditions such as democracy, the nature of the conflict including the size and strength of the groups in the conflict, and the will of the groups to unite.⁷⁴ When considering this argument a little more in detail, the nature of the relationship between nationalism, democracy and federalism in a multinational federation can be summarised as follows:

If different nations within a state demonstrate the will to live together, then a democratic federalism (that highlights group rights and enables the different nations to preserve their own identity within their province, whilst at the same time enabling them to participate at the central level through a second chamber, proportional representation and the inclusion in grand coalitions) is the most promising concept. Participation (including recognition) and self-government, therefore, offer different nations within the multinational state the highest degree of self-determination.

Democracy and Federalism, in this case, allow the preservation and promotion of different national identities. One core element of multinational federations is, therefore, a 'plurinational identity' which allows the identification with the national group as well as with the state.⁷⁵ Recognition in multinational states, therefore, refers

70 Burgess, Michael: *Comparative Federalism*, 2006, p. 108.

71 Kymlicka, Will: 'Federalism and Secession', 2000, p. 213, see also: Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 93 and Kymlicka, Will: 'Nation-building and Minority Rights', 2000, p. 189.

72 Forsyth, Murray: 'Introduction' in: Forsyth, Murray (ed.): *Federalism and Nationalism*, Leicester University Press: Leicester and London 1989, pp. 1-10.

73 He argues that ethnic cleavages and national conflicts are not solved in multinational federations, but they are managed to enable a fair accommodation and democratic participation. Indeed, this argument is very persuading and we shall from now on refer to conflict-management in multinational states. See: *Ibid.*, p. 5.

74 *Ibid.*, p. 6.

75 Requejo, Ferran: *Multinational Federalism and Value Pluralism*, 2005, p. 72.

to the recognition of more than one nationalism, national identity and finally nation. But the question which arises immediately is: if democratic federalism recognises and promotes self-determination of different nations within one state, what then makes the state hold together? The answer to this question was mentioned in the previous point: The existence of different levels of national identities and loyalties. Multinational federations need the existence of at least two layers of national identity to hold together and work properly, namely, national identification with the nation one belongs to and identification with the common state. All nations within the multinational federation need to have some form of shared identification with the common state.⁷⁶ The absence of a common vision on the state and the lack of any feelings of belonging to this state, will result in long-term political instability and the question of external self-determination, ie, secession. It will be argued below that the lack of identification with any form of Bosnian statehood amongst Bosnian Serbs and Croats is one of the main reasons for the continued political deadlock and the quest for secession amongst both groups.

Core Problems of Multinational Federations

Citizenship and Loyalty Citizenship and Loyalty are two major factors in multinational federations that need our further attention. Pierre Elliott Trudeau argued that the (multinational) federal state 'reduces the national consensus to the greatest common denominator between various groups composing the nation.'⁷⁷ It follows that the agreement to federalism as a form of minimal consensus between different peoples, reproduces minimal loyalty of the different peoples towards their state. The question that arises is twofold, first, how can such a loyalty be constructed or supported in the first place and, second, how can citizenship policies contribute to ensuring the concept of dual political loyalty (loyalty to the own people/nation and loyalty to the state)? Here seems to lay the core problem of multinational federations since, in mono-national states, both forms of political loyalty overlap and the state represents the nation (or at least claims to do so). Loyalty, and with it, identification, are very abstract and multidimensional concepts. The question of how to create and support the loyalty of all nations towards the state can be answered in two ways. Trudeau argues that 'the whole citizenry must be made to feel that it is only within the framework of the federal state that their language, culture, institutions, sacred traditions and standard of living can be protected from external attack and internal strife.'⁷⁸ It is, therefore, the guarantee of self-government and autonomy on the one hand, and the inclusion of all the nations in the central institutions on the other hand,

⁷⁶ Maiz, Ramon: 'Democracy, Federalism and Nationalism in Multinational States', 2000, p. 43.

⁷⁷ Trudeau, Pierre Elliott: 'Nationalism and Federalism' in: Karmis, Dimitrios and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan: London 2006, pp. 221–6, here p. 221.

⁷⁸ Ibid. pp. 222–3.

mora osetiti da je samo u okviru federalne države njihov jezik, kulturu, institucije, svete tradicije i životni standard moguće zaštititi od spoljnog napada i unutrašnje borbe.⁵⁹³ Prema tom shvaćanju, garantovanje autonomije naroda, s jedne strane, i participacija svih naroda (nacija) u centralnim institucijama, s druge strane, može podržati i stvoriti osećanje lojalnosti i identifikacije sa federalnom državom. Uz to, „stalno prispićivanje i održavanje sporazuma među narodima daje legitimitet višenacionalnoj federaciji“.⁵⁹⁴ To podrazumeva i često prilagođavanje ustavnih rešenja promenjenim društvenim prilikama, što je veoma kompleksan zadatak.

Drugi način za stvaranje lojalnosti i zajedničkog identiteta u višenacionalnoj federaciji jeste razvijanje podrške zajedničkim vrednostima (*common values*). U tom smislu, federacija razvija i štiti vrednosti koje su zajedničke svim građanima. Prema Burdžisovim rečima, „polazeći od univerzalnih ljudskih prava, ove vrednosti će se fokusirati na zaštitu kulturne raznolikosti, poštovanje i solidarnost prema drugima u državi i konačno stvaranje federalnog poverenja (*Bundestreue*)“.⁵⁹⁵ Pritom, „federalno poverenje u višenacionalnoj državi može se svesti na neke ključne vrednosti, kao što su verovanje u legitimitet federacije, demokratija, ljudska prava, zaštita kulturne raznolikosti i težnja ka zajedničkoj budućnosti“.⁵⁹⁶ Ni prepoznavanje zajedničkih vrednosti nije lak zadatak, pogotovu kada je reč o vrednostima koje je moguće zaštititi i u okviru nacionalne unitarne države.

Neki autori smatraju da i politika državljanstva može doprineti jačanju dvostruke političke lojalnosti i zajedničkog identiteta. Mnoge su federalne države, poput Švajcarske, uvele „dvostruko“ državljanstvo – državljanstvo kantona i jedinstveno švajcarsko državljanstvo. Prema tom shvaćanju, „koncept dvostrukog državljanstva je (...) prikladan alat za rešavanje zahteva za samoodređenjem, dok u isto vreme podržava lojalnost zajedničkoj državi“.⁵⁹⁷ Iako deluje da dvostruko državljanstvo nije jedini instrument pomoću kojeg je moguće razviti zajednički identitet, ono svakako može, uz sadejstvo drugih faktora, u ograničenoj meri pomoći da se on izgradi. Ali se ipak ne sme izgubiti iz vida da u federalnim državama „nema dvojnog državljanstva u smislu međunarodnog privatnog prava“ i da je svaki građanin federacije „državljanin jedne suverene države, čak i kada ima državljanstvo ili zavičajnost (*l'indigénat*) federalne jedinice“.⁵⁹⁸

⁵⁹³ P. E. Trudeau, 222-223.

⁵⁹⁴ S. Keil, 48.

⁵⁹⁵ M. Burgess, 113.

⁵⁹⁶ S. Keil, 48. Kaži navodi da je „glavni zadatak federalizma i demokratije u višenacionalnim državama da se uskladi podržavni nacionalizam, odnosno kolektivne potrebe i potrebe nacije ili nacija koje koegzistiraju u većoj, sveobuhvatnoj nacionalnosti federacije uzete kao celine“ (*Ibid.*, 46).

⁵⁹⁷ *Ibid.*, 48.

⁵⁹⁸ R. Marković (2014), 369.

to the recognition of more than one nationalism, national identity and finally nation. But the question which arises immediately is: if democratic federalism recognises and promotes self-determination of different nations within one state, what then makes the state hold together? The answer to this question was mentioned in the previous point: The existence of different levels of national identities and loyalties. Multinational federations need the existence of at least two layers of national identity to hold together and work properly, namely, national identification with the nation one belongs to and identification with the common state. All nations within the multinational federation need to have some form of shared identification with the common state.⁷⁶ The absence of a common vision on the state and the lack of any feelings of belonging to this state, will result in long-term political instability and the question of external self-determination, i.e., secession. It will be argued below that the lack of identification with any form of Bosnian statehood amongst Bosnian Serbs and Croats is one of the main reasons for the continued political deadlock and the quest for secession amongst both groups.

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⁷⁶ Maiz, Ramon: ‘Democracy, Federalism and Nationalism in Multinational States’, 2000, p. 43.

⁷⁷ Trudeau, Pierre Elliott: ‘Nationalism and Federalism’ in: Karmis, Dimitrios and Norman, Wayne (eds): *Theories of Federalism. A Reader*, Palgrave Macmillan, London 2006, pp. 221–6, here p. 221.

⁷⁸ *Ibid.* pp. 222–3.

that can support and create the feelings of loyalty and identification. The constant review and maintenance of the agreement between peoples gives the multinational federation legitimacy.

The second way to support the creation of loyalty and identification is the support of common values. The common state represents certain values that all nations share. Starting from universal human rights, these values will focus on the protection of cultural diversity, the respect and solidarity for others in the state and finally the creation of federal comity (*Blindstreue*).⁷⁹ Federal comity in a multinational state can be reduced to some key values, namely the belief in the legitimacy of the federation, democracy, human rights, the protection of cultural diversity and the aim for a common future. These values are very close to Jürgen Habermas' concept of *Verfassungspatriotismus* (constitutional patriotism).⁸⁰ Habermas argues that democracy will help to integrate different national identities into the joint state. However, some authors have criticised Habermas' concept of constitutional patriotism and claim that it is not sufficient for multinational federations.⁸¹ The creation of a non-ethnic identity and a common value system has lately played a key role in the debates about European citizenship. Indeed, it is common agreement that the majority of the peoples of the Western Balkans do see themselves as Europeans and as part of European history and a shared European destiny.

What remains to be discussed is in which way citizenship policy can contribute to a strengthening of dual political loyalty and identification. Some multilingual countries like Switzerland have introduced dual citizenship; a citizenship of a canton and the Swiss citizenship. Indeed, it seems as if the concept of dual citizenship either with the kin-state of a nation or regional and national citizenship seems to be an appropriate tool to address the demand for self-determination whilst at the same time supporting loyalty for the common state.

Territoriality and Secession One of the major debates between authors on multinational federalism and federation is the question of territoriality and, combined with it, the question of secession. However, to assess fully the debates about secession we have to distinguish between two concepts:

1. The question of whether federalism in multinational states necessarily leads to secession.
2. The question of whether a multinational federation should include a right to secede in the constitution and, if so, what the criteria for secession and separation should be.

⁷⁹ Burgess, Michael: *Comparative Federalism*, 2006, p. 113.

⁸⁰ Habermas, Jürgen: *Die Einbeziehung des Anderen*, Suhrkamp: Frankfurt am Main 1996, pp. 138–9.

⁸¹ Maiz, Ramon: 'Democracy, Federalism and Nationalism in Multinational States', 2000, p. 43.

b) *Secesija*. Jedna od tačaka sporenja među autorima koji pišu o višenacionalnom federalizmu jeste pitanje teritorijalne pripadnosti („teritorijalnost“) i, u vezi sa njom, pitanje prava na secesiju. U vezi sa secesijom postavljaju se, u osnovi, dva glavna pitanja: prvo je da li federalizam u višenacionalnim federalnim državama nužno dovodi do secesije, a drugo je da li višenacionalna federacija treba da uredi pravo na oцепljenje federalnim ustavom i, ako je odgovor pozitivan, koji bi kriterijumi za secesiju trebalo da budu.

Kad je reč o pitanju da li se višenacionalni federalizam nužno okončava secesijom, Vil Kimlika primećuje da „što više federalizam uspeva da zadovolji želju za samoupravom, to se više prepoznaje i afirmiše osećaj nacionalnog identiteta među manjinskom grupom i jača njeno političko samopouzdanje“, a kao posledica toga „oцепljenje postaje sve zamislivija i uočljivija opcija, čak i sa najbolje dizajniranim federalnim institucijama.“⁵⁹⁹ Nensi Bermeo, s druge strane, odbacuje Kimlikine argumente,⁶⁰⁰ dok Kail tvrdi da su oni slabi „jer je davanje autonomije i samouprave samo jedna strana novčića“ i da „uključivanje predstavnika (manjinske, M. S.) nacije u centralne institucije države, posebna prava veta i poštovanje i promovisanje različitosti na centralnom nivou (na primer, kroz višejezičnost, proporcionalnu zastupljenost u državnoj službi) promovišu stvaranje zajedničke odgovornosti.“⁶⁰¹ Kail smatra da se uključivanjem različitih nacija u procese donošenja odluka upravlja sukobljima i stvara dugoročna stabilnost. On navodi i da „politička realnost Kanade, Španije i Indije pokazuje da postoji stalna debata o unutrašnjem i spoljnom samoopredeljenju i oцепljenju“, ali se „takođe mora priznati da su ove države uspešno ostale zajedno tokom više decenija i rešile brojne političke krize.“⁶⁰² Ipak, kako upozorava Majkl Burdžis, višenacionalne federacije „ne smeju sebi dozvoliti da omoguće da se njihovi višestruki identiteti i višestruke pripadnosti – njihovi posebni federalizmi – fragmentišu i polarizuju oko uskih, unutrašnjih, kulturno-ideoloških lojalnosti čiji bi efekat bilo cepanje“ jer bi „to stvorilo ogromnu ustavnu i političku nestabilnost i moglo bi da dovede do raspada federacije secesijom.“⁶⁰³

Drugo pitanje – propisivanje kriterijuma i procedure za secesiju najvišim pravnim aktom federacije – jedno je od najkontroverznijih pitanja u teoriji o federalizmu. Jedno od ključnih pitanja u današnjim debatama o višenacionalnim državama jeste da li manjine treba da imaju pravo na oцепljenje kada centralna država ne poštuje njihovo pravo na nacionalno i kulturno samoodređenje. Ima pisaca koji zagovaraju garantovanje prava na secesiju u federalnom ustavu pod određenim uslovima. Tako je Alen Bjukenan (*Allen Buchanan*) tvrdio da, pod određenim okolnostima, koje uključuju kršenje ljudskih prava, tiraniju, pokušaj genocida i nezakonito zauzimanje teritorija

⁵⁹⁹ W. Kymlicka (2001), 113.

⁶⁰⁰ N. Bermeo (2002), 107.

⁶⁰¹ S. Kail, 49.

⁶⁰² *Ibid.*

⁶⁰³ M. Burgess, 103.

that can support and create the feelings of loyalty and identification. The constant review and maintenance of the agreement between peoples gives the multinational federation legitimacy.

The second way to support the creation of loyalty and identification is the support of common values. The common state represents certain values that all nations share. Starting from universal human rights, these values will focus on the protection of cultural diversity, the respect and solidarity for others in the state and finally the creation of federal comity (*Bündnisstreue*).⁷⁹ Federal comity in a multinational state can be reduced to some key values, namely the belief in the legitimacy of the federation, democracy, human rights, the protection of cultural diversity and the aim for a common future. These values are very close to Jürgen Habermas' concept of *Verfassungspatriotismus* (constitutional patriotism).⁸⁰ Habermas argues that democracy will help to integrate different national identities into the joint state. However, some authors have criticised Habermas' concept of constitutional patriotism and claim that it is not sufficient for multinational federations.⁸¹ The creation of a non-ethnic identity and a common value system has lately played a key role in the debates about European citizenship. Indeed, it is common agreement that the majority of the peoples of the Western Balkans do see themselves as Europeans and as part of European history and a shared European destiny.

What remains to be discussed is in which way citizenship policy can contribute to a strengthening of dual political loyalty and identification. Some multilingual countries like Switzerland have introduced dual citizenship; a citizenship of a canton and the Swiss citizenship. Indeed, it seems as if the concept of dual citizenship either with the kin-state of a nation or regional and national citizenship seems to be an appropriate tool to address the demand for self-determination whilst at the same time supporting loyalty for the common state.

Territoriality and Secession One of the major debates between authors on multinational federalism and federation is the question of territoriality and, combined with it, the question of secession. However, to assess fully the debates about secession we have to distinguish between two concepts:

1. The question of whether federalism in multinational states necessarily leads to secession.
2. The question of whether a multinational federation should include a right to secede in the constitution and, if so, what the criteria for secession and separation should be.

⁷⁹ Burgess, Michael: *Comparative Federalism*, 2006, p. 113.

⁸⁰ Habermas, Jürgen: *Die Einbeziehung des Anderen*, Suhrkamp: Frankfurt am Main 1996, pp. 138–9.

⁸¹ Maiz, Ramon: 'Democracy, Federalism and Nationalism in Multinational States', 2000, p. 43.

je, secesija može biti opravdana,⁶⁰⁴ jedan deo autora podržava Bjukenanove argumente, a neki čak zagovaraju i manje stroge kriterijume za secesiju.⁶⁰⁵ Druga grupa autora, kojoj pripada i Donald Horowitz, nasuprot tome, tvrdi da u društvima koja se suočavaju sa etničkim sukobima „pominjenje neće biti pomognuto pružanjem [...] prava na oцепljenje“⁶⁰⁶ i da secesija ne rešava suštinu problema niti je sama po sebi rešenje. U suštini, argument da je secesija legitimna u slučaju „nepoštovanja prava“ je slab jer ne postoji institucija koja takvo kršenje može objektivno i nepristrasno da oceni. Federalni centar će po pravilu tvrditi da nema govora o kršenju prava manjinskih naroda koji su učestvovali u stvaranju federacije, dok će nacionalna zajednica koja teži osamostaljenju dati sve od sebe da se legitimise kao žrtva „kršenja prava“, kako bi joj bilo priznato pravo na secesiju kao legitimno. Posebnu opasnost, pri tom, predstavlja mogućnost federalne jedinice da u svakom obliku federalnog dogovaranja dovodi u pitanje opstanak federacije ukoliko joj se pravo na secesiju garantuje federalnim ustavom. Ustavna praksa pokazuje da federacije uglavnom ne propisuju pravo na secesiju u svojim ustavima.

Pravo federalnih jedinica na jednostranu secesiju biće razmatrano u sedmoj raspravi (o načelu suprenatije), ali na ovom mestu treba naglasiti da je ono u osnovi nespojivo sa istinskim federalnim državnim uređenjem i da su retke federacije u kojima postoji ustavom uređen postupak za istupanje iz njihovog sastava (Etiopija, Sv. Kils i Nevis i, na specifičan način, Kanada). Istina je, ipak, i da mogućnost ostvarivanja secesije iz federacije često više zavisi od političke snage secesionista nego od ustavnih normi kojima se ona zabranjuje ili uređuje. U tome se ogleda politička priroda secesije.

c) *Podela nadležnosti i asimetrija.* Odrebe o podeli nadležnosti predstavljaju najvažniji deo svakog federalnog ustava. Zavisno od toga koliko su nadležnosti poverene nivoima vlasti, svaka federacija može biti manje ili više decentralizovana i upravo se u nivou decentralizacije i ogleda stepen primene federalnog načela u konkretnoj federalnoj državi. U višenacionalnim federacijama to je pitanje veoma složeno jer je neophodno da se nacionalnim federalnim jedinicama odgovarajućim nadležnostima omogući da očuvaju posebnost i identitet, a istovremeno se mora voditi računa o tome da ne ugroze jedinstvo federacije. Federalne jedinice bi trebalo da obavljaju poslove u oblastima koje su najznačajnije za očuvanje sopstvenog identiteta. Džejms Tuli (*James Tully*) smatra da je za opstanak višenacionalne federacije najvažnije da postoji pravo na „unutrašnje samoodređenje“ (*internal self-determination*), koje, osim odgovarajućih nadležnosti i institucija, podrazumeva i pravo da se svi narodi „demokratski izjasne o tome šta sve te nadležnosti podrazumevaju, kako se prema manjinama odnose i prepoznaju ih drugi članovi višenacional-

Will Kymlicka argues that “[t]he more that federalism succeeds in meeting the desire for self-government, the more it recognizes and affirms the sense of national identity amongst the minority group, and strengthens their political confidence [...]. secession becomes more conceivable and a more salient option, even with the best-designed federal institutions.”⁸² Other authors have questioned the argument that federalism in multinational societies supports secessionist ambitions.⁸³ Kymlicka's argument is weak because the granting of autonomy and self-rule is only one side of the coin. The inclusion of representatives of the nation in the central institutions of the state, special veto rights and the respect and promotion of diversity at the central level (for example, through multilingualism, proportional representation in the civil service) promotes the creation of a shared responsibility for the political space and the polity. The idea is that the inclusion of different nations within the decision-making processes manages conflicts and creates long-term stability. The political reality of Canada, Spain and India demonstrates that there is an on-going debate about internal and external self-determination and secession. However, it also has to be recognised that these states have successfully stayed together over many decades and managed numerous political crises.

The second question is the more difficult question. It refers to a case where a given state is not willing to respect (any more) the rights of different nations in its borders. Indeed, this remains one of the core questions in today's debates about multinational states: if minorities should have a right to secede when the central state does not respect their right to (cultural) self-determination. Allen Buchanan has argued that, under certain circumstances which include human rights abuses, tyranny, attempted genocide and unlawful occupation of a territory, secession might be morally justified.⁸⁴ In the literature on multinational federalism and federation, it seems that most authors support Buchanan's arguments and some even adjust less stringent criteria for secession.⁸⁵ Other authors, such as Donald Horowitz, argue instead that, for societies facing ethnic conflicts, “conciliation will not be helped by providing a [...] right to secede.”⁸⁶ Secession, therefore, does not address the core of the problem, and neither is it a solution.⁸⁷

To find a position in this debate is very difficult. On the one hand we might sympathise with Buchanan and others, and say that a clear break of the federal

⁸² Kymlicka, Will: *Politics in the Vernacular*, 2001, p. 113.

⁸³ Bermeo, Nancy: ‘The Import of Institutions’, 2002, p. 107.

⁸⁴ Buchanan, Allen: ‘Theories of Secession’ in: *Philosophy and Public Affairs*, Vol. 26, No. 1, 1997, pp. 31–61, here pp. 34–8.

⁸⁵ See Kymlicka Will: *Politics in the Vernacular*, 2001, Chapter 4, Requejo, Ferran: ‘Value Pluralism and Multinational Federalism’, 2004, p. 36, Bauböck, Rainer: *Multinational Federalism: Territorial or Cultural Autonomy?*, 2001, p. 14, Norman, Wayne: *Negotiating Nationalism*, 2006, pp. 170–215.

⁸⁶ Horowitz, Donald: ‘The Cracked Foundations of the Right to Secede’ in: *Journal of Democracy*, Vol. 14, No. 2, April 2003, pp. 5–17, here p. 15.

⁸⁷ Ibid, pp. 8–12.

⁶⁰⁴ Allen Buchanan, ‘Theories of Secession’, *Philosophy and Public Affairs* 26, 1/1997, 34–38.

⁶⁰⁵ U tom smislu F. Requejo (2004), 36; W. Norman (2006), 170–215.

⁶⁰⁶ Donald Horowitz, ‘The Cracked Foundations of the Right to Secede’, *Journal of Democracy* 14, 2/2003, 15.

ne zajednice, kao i mogućnost da se izmene s vremena na vreme.“⁶⁰⁷ Postavlja se pitanje koji su konkretni instrumenti i instituti koji bi doprineli da se tako proklamovana prava i ostvare, odnosno da se omogući da narodi koji su učestvovali u stvaranju federalne države (konstitutivni narodi) slobodno vođe dijalog o svom razvoju i, u skladu s tim, eventualnim promjenama u njihovoj saradnji i ustavnom položaju.⁶⁰⁸

Kako bi se zadovoljila potreba za nacionalnim samoodređenjem i dao dobar odgovor višenacionalnog federalizma na takve potrebe, federalnim jedinicama moraju biti garantovane one državne nadležnosti koje su direktno povezane sa njihovim samoodređenjem. Vil Kimlika tvrdi da manjine treba da imaju isključiva prava odlučivanja u oblastima obrazovanja, jezika, kulture i imigracije.⁶⁰⁹ a Zeren Kail tim oblastima pridodaje još i finansijsku autonomiju.⁶¹⁰ On pomalo utopistički navodi „da bi različite nacije unutar države trebalo da same odlučuju što je više moguće, a država bi trebalo da odlučuje samo kada se odluka mogu da sprovedu isključivo centralne institucije i broktraija.“⁶¹¹ Deluje, ipak, da bi tako visok stepen decentralizacije doveo do toga da država ima više karakteristika konfederacije nego federacije. Međutim, Kimlika upravo i tvrdi da mnoge manjinske nacije vide federaciju više kao labavu uniju (konfederaciju).⁶¹² Slično zapažanje iznosi i Ferran Rekejo koji čak podržava uvođenje konfederalnih mehanizama u višenacionalnim federacijama.⁶¹³ Prema Kajlovim rečima, ključna tačka u kojoj se prelamaju odnosi u višenacionalnim federacijama jeste oblast finansija. On smatra da je „u tom kontekstu, balans između centralizacije i decentralizacije u fiskalnim poslovima od ključnog značaja.“⁶¹⁴

Jedan od instrumenata za postizanje efikasnog balansa u višenacionalnim federacijama može biti i asimetrični federalizam. Svenden smatra da „višenacionalne federacije moraju težiti da pronađu prihvatljivu ravnotežu između zahteva manjinske nacije za posebnim priznanjem i želje većinske nacije da podži jednaka prava za sve građane bez obzira na njihovo mesto življenja“, pri čemu „bi stepen asimetrije trebalo da bude otvoren za prilagođavanje.“⁶¹⁵ Višenacionalne federacije u novije vreme često karakteriše asimetrija. „To ne znači da je cela federacija decentralizovana; to znači da neke jedinice, koje predstavljaju različite nacije, imaju više prava od drugih jedinica.“⁶¹⁶ Taj mo-

607 James Tully, „Introduction“, *Multinational Democracies* (eds. A. Gagnon, J. Tully), Cambridge 2001, 32.

608 *Ibid.*, 33.

609 W. Kymlicka (2001), 95

610 S. Keil, 50.

611 *Ibid.*

612 W. Kymlicka (2001), 113.

613 F. Requejo (2005), 36.

614 S. Keil, 51. I dalje: „Iako su federalne jedinice često osiguravale fiskalnu autonomiju, često uvedene uniforme prakse mogu drastično ograničiti ovu autonomiju.“

615 W. Swenden (2006), 266.

616 S. Keil, 51.

contract must lead to a right to leave the federal union, which, after all, was based on the consent of all people and peoples. On the other hand, it is particularly difficult to bring stability and co-operation to multinational states even through the incentives of self-government, autonomy and inclusion. A constitutional right to secede might, therefore, support the ambitions of different nations to manipulate the state in general. The debate about secession in Bosnia and Herzegovina is linked to Bosnia's experiences with the Socialist Tradition of Federalism. The experiences of the dissolution of Yugoslavia, and the subsequent war in the country to create a Greater Serbia and a Greater Croatia, plus the undefined nature of the Bosnian state and its permanent political crisis, result in permanent claims for external self-determination among Serbs and (less frequently) Croats in Bosnia. However, an evolving debate in international law might also have important consequences for Bosnia. According to this debate, minority nations and other minorities have a 'right to autonomy' instead of a 'right to secession'.⁸⁸ This might provide a solution to this problem in normative perspective as well as in the future development of international law. Instead of granting minorities a right to secede in the constitution, an international norm of a "right to autonomy" could be established.

Centralisation, Decentralisation, Symmetry and Asymmetry To understand the need for national self-determination and the response multinational federalism can offer to these demands, we must examine some policy areas that are directly connected with self-determination. Kymlicka argues that minorities should have exclusive decision-making rights in the area of education, language, culture, and immigration.⁸⁹ To this list one could add the area of financial autonomy, which is of key importance for self-governance.

In a multinational polity it is of vital importance to find the balance between centralisation and decentralisation. On the one hand, it could be argued that different nations within the state should decide as much as possible by themselves and the state should only decide when a decision can be implemented solely by the central institutions and bureaucracy. On the other hand, it could be stated that such a high degree of decentralisation would lead to the polity having more the characteristics of a confederation than a federation. Indeed, Kymlicka argues that minority nations see the federation more as a looser union (a confederation).⁹⁰ The same is argued by Ferran Requejo who even supports the introduction of confederal-like mechanisms in the federation.⁹¹ However,

88 I am grateful to Dr Jens Woelk for bringing this debate to my attention. For a first sketch of the debate, see: Woelk, Jens: 'Minderheitenschutz durch territoriale Autonomie: „Reservate“ oder nachhaltige Integrationsprozesse?', in: Europäisches Zentrum für Föderalismusforschung (ed.): *Jahrbuch des Föderalismus 2002*, Nomos: Baden Baden 2002, pp. 117–37.

89 Kymlicka Will: *Politics in the Twentieth Century*, 2001, p. 95.

90 *Ibid.* 113.

91 Requejo, Ferran: 'Value Pluralism and Multinational Federalism', 2004, p. 36.

novanje sa predstavničkom demokracijom, odnosno ugradnja tzv. konsocijativnih mehanizama u odlučivanje o pitanjima od vitalnog interesa za nacionalne zajednice u federaciji. Dobre uporednopravne primere primene konsocijativnih mehanizama pružaju Belgija i Švajcarska, dok u Španiji oni uopšte ne postoje, pre svega zbog ustavne fikcije o jedinstvenoj španskoj naciji.

Postavlja se pitanje kakve rezultate ostvaruje sadržajivo federalizma i demokracije u višenacionalnim državama. Nije sporno da i federalizam i demokracija poseduju kvalitete koji se mogu sažeti u vrednosti priznavanja, učešća i samoprave, ali ostaje pitanje kako oni utiču na (više)nacionalizam.⁶⁴² Kymlicka je više puta tvrdio da je demokratski federalizam pripitomio i umirio nacionalizam,⁶⁴³ dok je Marej Forsajt (*Murray Forsyth*) u svojoj analizi federalizma i nacionalizma došao do sličnog zaključka, ali je povezo „uspeh“ federalizma kao sredstva upravljanja sukobom sa drugim okolnostima kao što su demokracija, priroda sukoba, veličina i snaga grupa u sukobu, ali i volja grupa da se ujedine.⁶⁴⁴ Imajući to u vidu, Zeren Kaļ zaključuje sledeće: „Ako različite nacije u državi pokažu želju za zajedničkim životom, onda je demokratski federalizam (...) najperspektivniji koncept. Participacija i samouprava, dakle, nude različitim nacijama u multinacionalnoj državi najviši stepen samoodređenja.“⁶⁴⁵

Najstarija evropska federalna država, Švajcarska, smatra se pretečom današnjih višenacionalnih federacija zbog svoje jezičke, konfesionalne i kulturne heterogenosti. Nije sporno da je ta mala srednjoevropska demokracija bila prva složena država sa tako velikim razlikama među stanovništvom, ali je njen karakter višenacionalne federacije sporan iz razloga što svaki stanovnik te države, bez obzira na to kojoj jezičkoj ili verskoj zajednici pripada, ima izražen švajcarski identitet. Pripadnici nemačke, francuske i italijanske jezičke zajednice sebe smatraju Švajcarcima, a ne Nemcima, Francuzima ili Italijanima. Stoga, uprkos izraženoj multikulturalnosti, Švajcarska ipak nije više nacionalna federacija. Ona, s druge strane, jeste u određenom smislu preteča kasnijeg višenacionalnog federalizma jer je naknadno formiranim višenacionalnim federacijama služila kao dobar putokaz. Ali se mora naglasiti i da je švajcarski sistem nepopovljiv bilo gde u svetu imajući u vidu splet istorijskih okolnosti pod kojima je ta država nastala, sistem jedinstva vlasti koji je usvo-

642 Kad je reč o odnosu demokracije i nacionalizma, Zeren Kaļ zaključuje da su demokracija i nacionalizam potpuno kontradiktorni, s obzirom na to da se demokracija temelji na individualnim ljudskim i fundamentalnim pravima, vladavini prava i podeli vlasti, jednakosti i odgovornosti demokratskih predstavnika, dok nacionalizam, s druge strane, predstavlja nacionalnu homogenost, uključivanje i isključivanje i važnost kulture i etniciteta“ (S. Kaļ, 31-32).

643 Will Kymlicka, „Federalism and Secession: At Home and Abroad“, *Canadian Journal of Law and Jurisprudence* 13, 2/2000, 213.

644 Murray Forsyth, „Introduction“, *Federalism and Nationalism* (ed. M. Forsyth), Leicester – London 1989, 5.

645 S. Kaļ, 46.

Nationalism in Multinational Federations

By now it should be clear that the main task of federalism and democracy in multinational states is the accommodation of ‘sub-state nationalism, that is, the collective needs and requirements of the nation or nations that coexist within the larger, overarching nationality of the federation taken as a whole.’⁷⁰

Both federalism and democracy consist of accommodating qualities which can be summarised in the values of recognition, participation and self-government. However, the question that remains is how federalism and democracy affect nationalism. Will Kymlicka has more than once argued that ‘[d]emocratic federalism has domesticated and pacified nationalism.’⁷¹ Murray Forsyth, in his analysis of federalism and nationalism, came to the same conclusion.⁷² However, he also linked the ‘success’ of federalism as a tool of conflict-management⁷³ to other conditions such as democracy, the nature of the conflict including the size and strength of the groups in the conflict, and the will of the groups to unite.⁷⁴ When considering this argument a little more in detail, the nature of the relationship between nationalism, democracy and federalism in a multinational federation can be summarised as follows:

If different nations within a state demonstrate the will to live together, then a democratic federalism (that highlights group rights and enables the different nations to preserve their own identity within their province, whilst at the same time enabling them to participate at the central level through a second chamber, proportional representation and the inclusion in grand coalitions) is the most promising concept. Participation (including recognition) and self-government, therefore, offer different nations within the multinational state the highest degree of self-determination.

Democracy and Federalism, in this case, allow the preservation and promotion of different national identities. One core element of multinational federations is, therefore, a ‘plurinational identity’ which allows the identification with the national group as well as with the state.⁷⁵ Recognition in multinational states, therefore, refers

70 Burgess, Michael: *Comparative Federalism*, 2006, p. 108.

71 Kymlicka, Will: ‘Federalism and Secession’, 2000, p. 213; see also: Kymlicka, Will: *Politics in the Twentieth Century*, 2001, p. 93 and Kymlicka, Will: ‘Nation-building and Minority Rights’, 2000, p. 189.

72 Forsyth, Murray: ‘Introduction’ in: Forsyth, Murray (ed.): *Federalism and Nationalism*, Leicester University Press: Leicester and London 1989, pp. 1–10.

73 He argues that ethnic cleavages and national conflicts are not solved in multinational federations, but they are managed to enable a fair accommodation and democratic participation. Indeed, this argument is very persuading and we shall from now on refer to conflict-management in multinational states. See: *Ibid.*, p. 5.

74 *Ibid.*, p. 6.

75 Requejo, Ferran: *Multinational Federalism and Value Pluralism*, 2005, p. 72.

prvi je da postoji „jedno globalno društvo“, koje se „sastoji od više drugih manjih globalnih društava“, a drugi je da i u federaciji i u federalnim jedinicama bude „primenjena demokratija kao oblik političkog režima.“¹⁴⁰⁶ Jovičevićem se elementima federalne države gotovo nema šta zameriti, osim nekoliko stimplih detalja. Prvo, on navodi da se federacija sastoji od „dve kategorije političko-teritorijalnih jedinica“, a evolucija federalnog uređenja je dovela do toga da ih može biti i više (npr. u Belgiji ih ima tri, a u Rusiji čak sedam). Drugo, prema Jovičevićem mišljenju, federalni karakter države se utvrđuje pisanim ustavom, a realnost je pokazala da država može biti federalna čak i kada to nije eksplicitno utvrđeno njenim ustavom (npr. Španija¹⁴⁰⁷). I treće, Jovičić ne predviđa saradnju između nivoa vlasti kao jedan od nužnih elemenata federacije, što je verovatno uzrokovano trenutkom u kojem su njegovi bitni elementi nastali (pre nešto manje od pola veka). Te tri zamerke su, ipak, zanemarljive, pa se Jovičević „bitni elementi federalizma“ moraju oceniti kao veoma dobri i primenjivi i u današnje vreme.

Konačno, i Ronald Vots definiše šest ključnih elemenata federalne države, koji se u velikoj meri poklapaju sa Jovičevićem. To su: 1) postojanje dva ili više nivoa vlasti koji se biraju neposredno i neposredno deluju u odnosu na građane; 2) podela nadležnosti među tim nivoima vlasti definisana ustavom; 3) dvodolni federalni parlament, u kojem je gornji dom predstavništvo federalnih jedinica; 4) federalni ustav kao najviši akt federacije, čiji ključni elementi mogu biti promenjeni samo uz pristanak federalnih jedinica; 5) ustavno sudstvo i/ili referendum kao arbitar u sporovima o nadležnosti između različitih nivoa vlasti; 6) postojanje pravila o saradnji u okviru federacije.¹⁴⁰⁸ Votsovim elementima federacije može se staviti samo jedna sitna zamerka – nije u dovoljnoj meri naglašena autonomija federalnih jedinica, iako je u okviru prvog elementa rečeno da se njihovi organi biraju neposredno i neposredno deluju u odnosu na građane. U svemu ostalom suština je uglavnom pogodena, pa ona dobro prikazuju pravnu prirodu moderne federacije.

Imajući u vidu rezultate koji su proizašli iz deset rasprava, elemente federalne države koje su izložili ugledni teoretičari federalizma, kao i aktuelni trenutak u kojem se federalna država nalazi, čini se da se savremena federacija zasniva na šest načela. Ta načela ispunjavaju dva važna uslova: ona su, s jedne strane, dovoljno čvrsta da razdvoje federalnu državu od drugih oblika državnog uređenja, dok su, s druge strane, dovoljno fleksibilna da obuhvate različite modalitete federalnog uređenja kakve poznaje uporedno ustavno pravo. To su sledeća načela:

¹⁴⁰⁶ *Ibid.*, 20.

¹⁴⁰⁷ Šavije, Španija uporno negira da je federacija uprkos činjenici da njeno državno uređenje ima mnogo više federalnih elemenata nego uređenje, recimo, Belgije, koja se svojim ustavom proglasila federacijom.

¹⁴⁰⁸ Ronald Watts, „Federalism, Federal Political System, and Federation“, *Annual Review of Political Science* 1, 1/1998, 120–121.

normative principle is the perpetuation of both union and non-centralization at the same time.⁵⁰

He identifies four core underlying elements of federalism. First, the importance of a democratic form of decision-making, as the distinction between regional and national level has to be based on free and fair elections, democratic decisions and the competition of different ideas. Second, he argues for non-centralisation, as this is an inherent feature of federalism. Third, Watts argues that bargaining is the key form of decision-making in federal states. Therefore, the underlying elements of federalism must be co-operation and the will to compromise. John Kincaid summarises in this context peace, prosperity, democracy, liberty, efficiency, innovation and equity as the core values of a federal union.⁵¹ Finally, Watts inherently defends the rule of law and the importance of a strong and rigid constitutionalism within a federal state.

Turning to the empirical application of federal theory, Ronald Watts offers a definition of federation, which has become standard in most textbooks:

A federation is a compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens.⁵²

He argues that the core elements of a federation are the following:

1. The existence of two or more levels of government which are directly elected and each act directly upon citizens.
2. The distribution of powers between those levels is constitutionally guaranteed.
3. Federations are always characterised by a bicameral legislature (whereby most of the time the second chamber is a forum of representation of the regional units).
4. 'Supreme written constitution' meaning that core elements of the constitution can only be changed with the agreement of the regional units.
5. Constitutional Courts and/or referendums take the role of a mediator in the case of constitutional conflicts about the distribution of powers between the levels.
6. Provisions for inter- and intra-level co-operation.

⁵⁰ Watts, Ronald: *Comparing Federal Systems*, 2nd edition, McGill Queen's University Press: Montreal and Kingston, 1999, p. 6.

⁵¹ Kincaid, John: 'Values and Value Tradeoffs in Federalism' in: *Publius: The Journal of Federalism*, Vol. 25, No. 2, Spring 1995, pp. 29–44.

⁵² Watts, Ronald: 'Federalism, Federal Political System, and Federation' in: *Annual Review of Political Science*, Vol. 1, No. 1, 1998, pp. 117–37, here quoted p. 121.

ПРИЛОГ БРОЈ ТРИ:

Когоритно представљање присвојених аутора и дела из плагираних књига на основу „Литературе на страним језицима“

у монографији

Марка Станковића, *Преображаји федералне државе – десет расправа о промененој природи и суштини федерализма*, Правни факултет Универзитета у Београду, 2020.

Појашњење: жутом бојом су означени аутори и дела који су присвојени из Francesco Raletto, Karl Kössler, *Comparative Federalism - Constitutional Arrangements and Case Law*; зеленом бојом су означени аутори и дела који су присвојени из Soeren Keil, *Multinational Federalism in Bosnia and Herzegovina*; плавом бојом су означени аутори и дела који су присвојени из Wilfried Swenden, *Federalism and Regionalism in Western Europe* - A *Comparative and Thematic Analysis*; и, розе бојом су означени аутори и дела који су присвојени из Michael Burgess, *Comparative Federalism - Theory and Practice*.

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¹⁴²² Spiskom literature obuhvaćene su isključivo bibliografske jedinice koje su navedene u tekstu ove knjige.

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