

MECHANISM OF FEDERALISM IN SWITZERLAND: AN OVERVIEW

SumaiyaAlmass*

Abstract

Since the year 2000, Switzerland has had a totally revised constitution. The main changes deal with issues of federalism. Globalization has and will have strong centralizing effects, although localization might trigger emotional and nationalistic reactions within the different ethnic communities of Switzerland. Swiss Federalism builds on the traditional and to a certain extent also the modern diversities. Since middle age the Swiss Confederation has always been enriched and challenged by economic, religious, cultural and linguistic diversities. Since the foundation of Switzerland as a state of modernity in 1848 the constitution has been more than 100 times modified with specific provisions. It has centralized some of the powers and compensated the loss of self-rule with more shared rule and thus given cantons more possibilities to participate within the federal decision making process. The growing mobility of people and the important percentage of foreigners living in Switzerland (20 percent) are additional challenges to the already existing but constitutionally provided diversity. This paper will explain the new constitution within this framework of the modern federalism. In particular, it focuses on the specificity of Swiss constitution, its framework and the new balance between self-rule and shared rule and recent developments.

Key words: Switzerland, constitution, federalism, cantons, Self-rule.

* Doctorate fellow, Dept. of Political Science, AMU, Aligarh.

HISTORY OF SWITZERLAND

The origin of Switzerland goes back to the thirteenth century¹, When three tiny alpine communities of Uri, Schwyz and Unterwalden managed to established independence from the Holy Roman Empire in 1273.² By the time of French revolution, ten other regions and cities had followed suit.³ The origins of Switzerland go back to the thirteenth century, but modern Switzerland was initiated by Napoleon's intervention in 1800 and properly started with the constitution of 1848.⁴ However, the French imposition of a centralized Helvetic Republic was not a success, and in 1803 Napoleon partially restored cantonal autonomy in the Mediation Act. In 1815 the Swiss chose to return to the old confederal system. Considering themselves as sovereign states, of which by then there were 25, they re-established a treaty to guarantee collective security through mutual assistance. By the middle of the nineteenth century, however, this loose confederation was no longer efficient enough for a majority of the cantons. They pointed to the need for a more powerful federal government to keep up with the demands of state building, modernization, and economic development that were occurring in the surrounding countries of Germany, France, Italy and Austria.⁵ At the end of eighteenth century modernization in neighboring countries, industrialization and the professionalization of the army combined with the ideas of the French Revolution triggered demands for some centralization and modernization in Switzerland. In 1798 French forces led by Napoleon invaded and created a centralized state in accordance with the French example. The Cantons were transformed into equal but purely administrative units. Switzerland however, quickly proved to be ungovernable as a centralized state, and Napoleon brought back the cantonal system.⁶ In the year 1815 the celebrated Congress of Vienna met to recognize the political map of Europe after the final overthrow of Napoleon. The Swiss demanded restoration of their erstwhile subject territories but the Congress rejected the demand. However, the Swiss obtained a liberal constitution known as the pact of 1815, which marked the beginning of the fourth period. The pact recognized the equality of status of all the Cantons, small or large, and gave each canton one vote in the national Diet.⁷ There were deep divisions between the conservative rural Catholic, who resisted a strong national executive, and these radicals from the industrializing Cantons who pushed for a stronger union. In 1847, the radical Cantons went to war to prevent the conservative *Sonderbund* from seceding. The industrialized Protestant cantons emerged victorious from the brief civil war which lasted only twenty days, with a loss of 120 lives. The outcome was the federal constitution of 1848, which

stripped the cantons of sovereign state rights and turned them into members of a federation but stopped short of a unitary state.⁸ This constitution was a compromise between the winners and the losers of the civil war. It introduced some centralization but it also guaranteed, through the institutional set-up and the limitation of competencies of the central government, respect for cantonal diversity with the 1848 constitution, Switzerland took an important step towards modernity. It became a federal country based on constitutionally guaranteed shared rule and self-rule.⁹ With the formation of constitution there was some doubt in some minds whether the new union was an alliance or a federation. It did not however, take long to be confirmed that the new constitution was not a treaty by virtue of which a new alliance had been established among sovereign cantons. It was a real constitution, the supreme law embodying the will of the sovereign Swiss people and bringing into existence and operation a new state called the Confederation of Switzerland. The word 'confederation' might be misleading. But it was used as a substitute for 'federation'.¹⁰ In 1872 the constitution underwent further revisions increasing the powers of the federal government.¹¹ With the revised federal Constitution of 1848 it began the fifth period in the federal history of Switzerland. It settled to a great extent the question of federal power as against that of state sovereignty. By establishing a federal post office, a national telegraph, and a uniform coinage it brought about greater cohesion among the Cantons. An impetus was given to the improvement of roads, canals, and the educational and military systems. Subsequent changes brought the constitution in conformity with the requirements of the times. The constitution of 1848 as revised between 1870 and 1931 is the present constitution Switzerland.¹² The Swiss federation is notable for its significant degree of linguistic and religious diversity, although the German Swiss continue to dominate in overall numbers and economic power.¹³

THE CONSTITUTION

By referendum on April 18, 1999, a revised Swiss constitution was approved and went into effect on January 1, 2000. It codifies the 1874 constitution and its amendments without radically changing the federal nature of the Swiss confederation or the structure of the government, basically putting the old constitutional provisions into more modern form. For example, it organizes citizen rights under a separate title like most other national constitutions and clarifies the jurisdictions of the federal government and the governments of the cantons. It does extend

some new rights, however, such as protecting persons “against the abuse of medically assisted procreation and gene technology” including cloning. U.S and French constitutional principles informed the 1848 constitution. The 2000 document continues the country’s limited system of federal government.¹⁴

Switzerland is organized into three governmental arenas: the commune, the canton (or half-canton), and the federation. There are over 3,000 communes which range in size from less than 20 inhabitants to Zurich with over 344,094 inhabitants (1992). Canton constitutional organization varies with each canton and the federal government consists of a bicameral legislature and a collective seven-member executive.¹⁵

Direct democracy

The system of direct democracy finds its full application in this mountainous country.¹⁶ In Switzerland direct democracy is part of the everyday political life, probably more than in any other country. Votes on one or more issues take place up to four times a year. Since the first national vote on the constitution in 1848 Swiss citizens went to the polls to vote on 521 issues until the end of 2005. Campaigns on referendum issues take place throughout the year and the issues subject to a popular vote dominate the political agenda of parties and the media to a large extent.

Basically three forms of direct democracy exist in Switzerland:

- **Compulsory referenda:** every constitutional change has to be approved by the citizens too. In addition, membership to supranational organizations is subject of a compulsory referendum.
- **Optional referenda:** every law that has passed parliament can be challenged by any group of citizens through collecting 50’000 signatures within 3 month. If the required number of signatures is confirmed, a vote takes place. Additionally, subject of an optional referendum are international treaties that are of unlimited duration, provide membership of an international organization or involve multilateral unification of law.
- **Popular initiative:** Any group of people can propose a constitutional change through collecting 100’000 signatures within 18 month. The parliament has the right to bring a counter proposal to an initiative to the vote at the same time.¹⁷

Democracy should not be reduced to a state principle, the sole purpose of which is to produce an efficient majority. Rather, democracy should be seen as serving liberty and as establishing through public discourse the legitimacy of procedures and institutions for political consensus-building according to the famous Gettysburg address by president Lincoln: “with the people, by the people, and for the people”. A consensus-oriented democratic process, in which decisions are made from bottom up, is based on the conviction that each decision of the policy should provide for the single individual as much self-determination as possible, whether this is through individual liberty or through optimal participation in the community.¹⁸ This process starts with the self-determination of the individuals and rises upwards through the levels of municipal, district, and cantonal communities before concluding at the federal (or even international or supranational) level. Decisions at the federal level should enable as many citizens as is possible (and efficient) to participate in the decision-making process. From this point of view, democracy can be considered as complementary to federalism as it enhances the principle of subsidiary with regard to the distribution of powers. It provides an adequate distribution of powers not only between Confederation and Cantons but also between Cantons and municipalities.¹⁹

In the literature, Switzerland has always been treated as paradigmatic case of cultural accommodation in a tiny plurilingual country. Its federal government is based on a permanent coalition of all major parties, elected by parliament for possibly indefinite terms (because the coalition always remains the same), a cabinet of only seven members’ hold executive power. Among these, the presidency is shared on a rotation basis. At least outside the country, therefore, hardly anyone knows the Swiss President actually is. And most importantly, the Swiss political system is more than any other based on direct democracy. Particularly all important legislative decisions, up to 120 a year all levels of government, are decided by referendums.²⁰ Under the constitutional distribution of powers a significant proportion are assigned to the federal government with the residual powers to the Cantons, there is in practice a high degree of decentralization because the constitution leaves the federal government highly dependent upon the autonomous cantons for the administration of a large portion of its legislation. There is relative symmetry in the jurisdiction of the cantons, although 6 of the 26 cantons are classified as “half cantons” and therefore each of these has only the representation in the council of states.²¹ The electorate is the highest authority in Switzerland in that it has the

power to elect parliament and to review legislation through referendums, or to amend or revise any aspect of the federal and cantonal constitutions.²² Article 43 and 47, respectively; provide that between the federal government and the government of the individual cantons, the cantons “determine the tasks which they accomplish within the framework of their competencies... The Confederation respects the autonomy of the cantons.” Federal law, however, “takes precedence over conflicting cantonal law,” and the constitution details specific subject areas of federal and cantonal law. Article 148 declares with respect to the federal government: “subject to the rights of the people and the cantons, the federal Assembly [legislature] is the highest authority of the confederation.”²³

Multiculturalism and diversities

Multicultural societies are of course, nothing new, but the phenomenon of multiculturalism is growing and changing, especially through the aforementioned population movements of various kinds. In Switzerland federalism enabled the peaceful coexistence of different regional/ cantonal, linguistic and religious identities and even promoted diversities.²⁴ The Swiss Constitution has in fact tried to develop a special type of federal state-one that is developed and determined by its multicultural environment. This state is based on principles that have shaped the political culture of Switzerland, including the distribution of powers. Taking cultural diversity seriously, the Constitution provides the Confederation with general responsibility to promote cultural diversity within its delegate competences and with regard to languages, to provide measures for the better mutual understanding of different language communities. Cultural sovereignty with regard to culture proper and to education remains within traditional cantonal powers.²⁵

If one were to characterize Swiss Federalism in comparison to US or German Federalism, one would have to consider Swiss Federalism as a legitimate federal system which accommodates traditional diversities and holds those diversities together by direct democracy, autonomy of the municipalities and cantons, and by the participation of those diversities within the decision-making process on the federal and cantonal level.²⁶

Multiculturalism, diversity and complexity has been often been shaped out of brutal religious wars and ideological controversies that in the past risked breaking the country into pieces.²⁷

Religious diversity

From a historical perspective, religion used to be the most decisive. Its importance however, has been decreased.²⁸ The most ancient diversity, which forced the early Confederal Alliance in the middle ages to find a fundamental compromise, was the diversity between urban and rural cantons. The diversity which later caused the most violent conflicts in the 16th century was the religious diversity between the two Christian confessions, the Catholics (today 42%) and the Protestants (today 33%). The compromises concluded in freedom treaties after a civil war in the early 16th century still have repercussions on modern federalism. The decision of 1529 (later partially revoked by the second peace of Kappelen “Kappeler Landfrieden”) gave cantons and even municipalities the power to decide on their official religion. This early principle of religious territoriality has been applied in many small territories with the effect that some cantons still have clear Protestant or Catholic majorities and some cantons are even religiously divided between rather Catholic or rather Protestant municipalities. This religious diversity has influenced a concept of intense relationship between the state and the religious communities and it directly or indirectly led, mainly in Protestant cantons, to the various democratic developments. Even today, cantons still distinguish with regard to the different democratic rights of the citizens. Moreover, religious diversity added a new diversity based on different concepts of the state and different tools of democratic participation by citizens.²⁹

The first Swiss Constitution of 1848 faced the challenge of integrating a society strongly divided along religious lines. A further difficulty consisted in the politicized nature of the religious divide. Protestants mainly supported the liberal Free Democratic Party, which was the dominant political force in the first six decades after the founding of the federation. The Catholic cantons were the stronghold of conservative political forces, which were united as of 1912 under the umbrella of the Swiss Conservative People’s Party, later renamed the Christian Democratic People’s Party.³⁰

Linguistic diversity

The Swiss federation came into being as multilingual state in the middle of the 19th century and has attained its full fruition during the next one hundred years. During this period

linguistic nationalism has been the chief feature not only of European but of world history. It should appear wonderful that the Swiss Cantons instead of coalescing with their neighbors on racial and linguistic grounds have remained together as a separate multilingual nationality.³¹

The question of official languages falls within cantonal jurisdiction. Bilingual Cantons provide an equal footing for two official languages, while the trilingual Canton of Grison does so for three (German, Italian and Romansch-Grisum).³² Following occupation by the French army after the French revolution and during the reign of Napoleon, the small territory of Switzerland, with surface area of only 41,290 Km² and a population of 7.3 million inhabitants (less than several metropolitan areas of today's globalized world), developed into multilingual federation with four different national languages: 64% German, 20% French, 6.5% Italian, and 0.5% Romansh. The remaining 9% are the language of foreign migrants such as Serbo-Croat (1.4%), Albanian (1.3%), Portuguese (1.2%), Spanish (1.1%) and Turkish 0.6%, as well as many majority languages.³³ The 1848 constitution served to balance linguistic diversity through the provision of three official languages (French, German and Italian), adding, later on, a fourth language (Romansh). All linguistic rights are protected through the non-written constitutional principles of "linguistic sovereignty" and "territoriality". Seventeen of the 26 cantons are unilingual German, four French and one Italian. There are bilingual (German and French: Berne, Fribourg, Valais) and one is trilingual (German, Italian, Romansh: Grisons).³⁴

The federal legislature

As provided in Article 148, Switzerland's parliament is called the federal Assembly.³⁵ According to the Swiss Constitution, the Federal Assembly is the supreme power in the federation, subject only to the powers of the people (Article 148 B-V). The Assembly functions either as one united chamber or as two independent chambers. It holds the legislative power to make all federal laws (with each chamber deciding independently) and appoints the members of the executive branch, the members of the federal Court and the other major federal bodies, and the commander-in-chief of the army in times of war (with the chambers deciding as a united body).³⁶ The Swiss Federal Assembly is divided into two chambers, the **National Council** representing the people, and the **Council of States** representing the Cantons.³⁷

In the Council of States each canton has the same number of votes. Each chamber has exactly same powers, and no federal statute can be enacted without the agreement of both of the chambers (Article 148,156,163). The influence of the cantons through the Council of States has declined, however, due to the fact that cantons are not allowed to instruct their representatives (Article 161). The only external influence on Members of Parliament is their need to be re-elected. In elections to the Federal Assembly the cantons form the constituencies (Article 149) and the cantonal sections of the parties select the candidates. In Switzerland political parties are strongest at the cantonal level, and therefore the deputies of both chambers try to adapt their political actions to the interests of the cantonal section of their respective party. This is a very important element of shared rule in Switzerland and provides one of the most significant counter-weights to the centralizing force of the federal government.³⁸

National council (lower house)

The national Council is the lower house of the legislature. The total strength of the house is not fixed by the constitution and is variable from time to time according to the growth in the population of Switzerland. In the initial stages, one representative used to be elected from 20,000 people but that figure was later on raised to 22,000. In actual practice, after every ten years, there is a census and on the basis of that census the number of representative to be returned by any Canton is fixed according to the population of the Canton. It has however, been made specifically clear that every Canton or half Canton must be represented by at least one representative in the National Council.³⁹ Another source says that The National Council consists of 200 members. Its composition and organization are regulated by the constitution of confederation. Its members are elected directly by proportional representation. Every Swiss citizen who has completed 20 years of age, and who has not been deprived of his rights of active citizenship by the legislation of the Canton in which he resides, has right to vote and is qualified to be a member of the Federal Council, and employees of the Confederation cannot be members of this council. The National Council is elected for a period of four years. It cannot be dissolved earlier. It elects its chairman and Vice-Chairman from among its members for every ordinary and extra ordinary session.⁴⁰ The National Council is elected from 26 districts, corresponding to the 26 cantons, and the seats are divided among the cantons according to their population shares. Each canton has at least one representative. This logic has three consequences. First, the choice given to the electorate varies considerably between the small and large cantons. While the

inhabitants of the canton of AppenzellInnerhoden, with its some 15,000 inhabitants, elect only one parliamentarian, the canton of Zurich, with its more than one million people, sends 34 representatives to the National Council.

Second, the differences in the size of the population of the Constituent units influence the operation of the electoral system of proportional representation. The proportionality rule, introduced in 1918 by a popular initiative, should offer a better chance to small parties in the segmented Swiss party system.

Finally, as the cantons are the constituencies for the election, only candidates with sufficient cantonal support have a chance to be elected. Thus, even if the National Council formally represents the Swiss people as a whole, cantonal politics, cantonal interest, and cantonal parties have strong impact on its composition and operation.⁴¹

The council of states (upper house)

The Council of States happens to be the Upper Chamber of the Swiss legislature. It stands for the concept of the cantonal Sovereignty and personality. As such, like that of American Senate, it gives equal representation to all the units irrespective of their size and population. Every canton sends two representatives and every half canton only one representative to the Council of States. Its total membership is forty six, representing twenty-three Cantons, three divided into half Cantons. Unlike that of the USA, the mode of election and the tenure of these members of the Swiss Council of States are not uniform. Each Canton, by its own laws determines the method of election of the Deputies and their tenure.⁴²

The Council of States consists of 46 members, two from each full canton and from each half canton. The cantons determine the method of choice and term of office of the members. There is, accordingly, no uniform method of office of the members, and no uniform method of election. Nor is the term of office the same for all members. Article 81 of the constitution says that members of the National Council and those of the Federal Council cannot be simultaneously members of the Council of States.⁴³ The members of the Council of States are considered to be the representatives (or even delegates) of the once-sovereign cantons. Therefore, elections to the Council of States are cantonal elections, and the cantons have the competence to determine the mode of election (in contrast, in this respect, to the Senate of the United States). Before direct elections became the rule after the Second World War, in many cantons the two delegates to the Council of the States were nominated by the cantonal parliament. By now, however, the Council

of the States is elected by the people in all cantons, usually following the principle of majority rule. This means that a candidate must gain the absolute majority of votes in order to win seats.⁴⁴

The two houses of the Federal Assembly have equal powers. This is a unique feature of the Swiss legislature. No measure can be enacted which has not been approved by the both chambers. This is the position in theory. In practice, the National Council wields more power than the Council of States.⁴⁵ Complete equality of the states is the most remarkable feature of the Swiss legislature possesses co-equal and co-ordinate authority in every aspect. As already said, bills can be initiated in either of them. This is unlike that of India and UK where money bill must be initiated in the Lower House. Even the Federal Councilors are accountable to both the Houses. They have to answer the questions in both the Houses. For electing the members of the Federal Council, the Judges of the Federal Tribunal, the Chancellor and the Commander-in-chief, both the Houses hold a joint session. For granting of pardons and resolving of dispute amongst the federal authority, both the Houses sit together. Hence as already said, Dr. C.F Strong views Swiss Legislature as the only legislature in the world the functions of whose Upper House are in no way differentiated from those of the Lower.⁴⁶

Federal executive

“Federal Council is the highest directing and executive authority of the Confederation,” states article 174. It consists of seven members elected by the legislature after each full renewal of the lower house, but only one member may be elected from a canton.⁴⁷ The Federal Council is elected by the Federal Assembly, the joint assembly of the 246 members of both houses of the federal Parliament. There is no vote of confidence, however, and members of the Federal Council are usually re-elected after the normal four-year period, if they so desire.⁴⁸

As a result, the federal council in Switzerland is a unique plural executive, neither presidential nor parliamentary, with features characteristics of both parliamentary and presidential form of government. The institution of this remarkable little country is without doubt, the federal council, the Swiss federal executive. There is no parallel to it in other constitution. It is quite peculiar among the constitutional systems of the world.⁴⁹ Its parliamentary features lie in some points- its members are chosen by the legislature, they have right to be present in the legislature, take part in the proceedings and initiate legislative

measures. They are subject to interpolation in either house and they carry out the wishes of the legislative. It also possesses some non-parliamentary features: that is its members are not members of the legislature, then term of office is fixed, they cannot be removed by the legislature. It has no Prime Minister and it does not function according to the principle of joint responsibility.

Swiss executive is non-partisan in character. Its members do not belong to the majority party in the legislature or in any of its chambers.⁵⁰

All cantonal governments, although different in organization and size, are based on the principle of the sovereignty of the people. While the executive structure differs from canton to canton, it is elected by universal suffrage in all cantons. The executive council is generally composed of a one-year chairman chosen by the legislature, and several ministers encompassing cantonal functions. All cantons have a *Grosser Rat* or *Kantonsrat* which exercises the functions of a cantonal parliament.⁵¹

Reference may be made to some remarkable features of the Swiss executive. As already pointed out, it is collegiate or plural.⁵² Unlike that of UK, France and USA where the supreme executive power is vested with the single individual, the Swiss Constitution vests the Supreme executive authority of the Confederation in the Federal Council—a plural body. It consists of seven members who enjoy parity in powers and possess co-equal authority.⁵³ The seven members of the federal council act as ministers responsible for the seven administrative departments of the republic (foreign affairs, interior, justice, military, finance, public economy, transport, communication and energy). Each year the Federal Assembly also chooses a chairman and vice-chairman from among the members of the Council who serve respectively as president and vice-president of the confederation.⁵⁴

There is no Prime Minister, and the President of the Swiss Confederation has no power to select colleagues. He has authority over them. Moreover, the Swiss executive is at once parliamentary and non-parliamentary. It is parliamentary in the sense that its members are chosen by the legislature. They have right of being present in the legislature. They can introduce bills and take part in the discussions in the legislature. They carry out the will of the legislature. However, the responsibility of the executive to the legislature is enforced in different ways in

England and Switzerland. In Switzerland, the members of the Federal Council are not expected to resign if a bill introduced by them is rejected by the Federal assembly. They either drop the matter altogether or remodel the bill in the light of the criticism.⁵⁵ Federal executive has the power to object to a treaty between a canto and a foreign state. If the federal executive or canton objects to a cantonal treaty, the federal legislature has the power to approve the treaty.⁵⁶ The composition of the executive branch of the federal government, the federal Council is a very important factor of shared rule, mainly because the Federal Council and its administration draft almost all law-making propositions and they negotiate whenever an international treaty is discussed. The Federal Council is one of the best examples to show the particularly Swiss way of conducting politics- what is called consensus-driven democracy.⁵⁷

If we talk about the merits of federal executive, it provides a body which is able not only to influence and advice the ruling Assembly without lessening its responsibilities to the citizen, but which, because it is non-partisan, can mediate, should need arise, between contending parties, adjusting difficulties and arguing compromises in a spirit of conciliation. It enables proved administrative talent to be kept in service of the nation, irrespective of the personal opinions of the Councilors upon the particular issues which may for the moment divide the parties. It serves continuity in policy and permits traditions to be formed.⁵⁸

Federal judiciary

The Swiss federal court is known as the Federal Tribunal. It is the youngest of the three organs of the Swiss Federal Government since it was created by the Constitution of 1874. The Constitution of 1848 provided for a court for the administration of justice in the Federal sphere, but it was not vested with the power of resolving conflicts between the Confederation and the Cantons or among the Cantons themselves. Such cases were heard and decided by the Federal Assembly. The Federal Court had no fixed location for the transaction of business and it lacked qualified professional personnel. The Constitution of 1874 did not bring about radical changes in the powers and jurisdiction of the existing court. But in actual practice, its powers were considerably increased. The subsequent constitutional amendments further increased its powers. The Court, as at present constituted, first assembled in 1875.⁵⁹ It was established at Lausanne. The Constitution clearly states that the organization of the Federal Tribunal, the number of its members and deputy members, their term of office and pay will be fixed up by law

of the Federal Assembly. The law fixed the number of judges between 26 and 28 and the number of alternates or substitutes between 11 and 13. At present, however, the number of full time federal judges is 38 and the number of deputy judges is 19.⁶⁰ In addition to federal court, article 191a, added in 2000, authorizes the establishment of a criminal court and other judicial authorities. Under 191b, also added in 2000, “The Cantons establish judicial authorities for the adjudication of civil law and public law disputes, as well as criminal cases.”⁶¹ The organization of the judiciary, legal procedures and the administration of justice are the responsibility of the cantons. Cantonal courts adjudicate both federal and cantonal laws. The Supreme Court is the Federal Tribunal, which is the highest court of appeal over the cantonal courts and the court of original jurisdiction in certain federal matters. For army cases there exists a complete federal judicial system.

The 30 member Federal Tribunal is elected by the Federal Assembly for six years, and has original and final jurisdiction in suits between the confederation and the cantons; between cantons; between the confederation and the cantons on one side and corporations or individuals on the other; and in such suits as the constitution or legislation of the cantons places within its authority. The Federal Tribunal is divided into ten chambers, two for public law, two for general civil law, one for bankruptcy, one for accusation, one for criminal law, one as a federal criminal court, an ordinary and an extraordinary chamber of cassation. A separate and autonomous division of the Tribunal with nine judges sits in Lucerne as the Federal Insurance Tribunal. There is no judicial review of federal legislation.⁶² The federal structure of Switzerland is also reflected in a dual judicial system, with the Federal Court in the national sphere and 26 cantonal court systems. The Federal Court is primarily the appellate court for matters of federal law. In addition, it functions as a constitutional court to protect the federal Constitution against the cantons. Thus, it can engage with cantonal law but only to the extent necessary to decide whether federal law, due process of law and human rights laid down in the Constitution have been respected. In an overwhelming majority of cases, the Federal Court confirms cantonal judgments.⁶³

The Federal Tribunal is vested with both original and appellate jurisdiction. Its original jurisdiction extends to civil, criminal, administrative and constitutional cases. The Tribunal has no power of interpreting the Constitution and declaring a federal law invalid. It cannot question

the validity of laws passed by the Federal Assembly. It can, however, inquire into the constitutionality of Cantonal laws and actions of Cantonal executives and sometimes Federal executives.⁶⁴ The function of the Federal Court should not be underestimated. While the federal executive and legislative branches have neither the legal nor the political means to force the cantons to implement federal tasks, the Federal Court can compensate for this in several ways. In particular, it can review a cantonal policy or the cantonal implementation of a federal task on the grounds that it contradicts federal law. As a result, it is sometimes necessary for the court to deal with political rather than with strictly legal questions.⁶⁵

National integration

Most of the recent trends in Swiss federalism can be traced to the phenomenon of increasing and accelerating integration. Whereas at the global level integration is still mainly restricted to the economy, it has become a powerful political project at the European level. This has been changing the political landscape in Switzerland in recent years by providing a platform for growth of the populist and nationalist-conservative Swiss People's party which is opposed to political integration at both the European and global levels. Until now this has not threatened the coalition government in place since 1959, but it has strained Swiss unity because it has created a cleavage between the French cantons which are in favor of political integration and the German-speaking ones which oppose it. For the time being it is still the policy of the Federal Council to join the European Union (EU), but after the implementation of bilateral treaties on air, road and rail traffic, free movement of persons, public procurement and technical barriers to trade, as well as agricultural products and research. The question remains how Swiss federalism can adapt to these developments without having to sacrifice its past accomplishments with respect to internal peace, political participation and welfare.⁶⁶

Conclusion

There are three sets of challenges for the future of the institutional arrangements for federalism in Switzerland. The first concerns cantonal autonomy and decentralization. Clearly in the Swiss context, both offer some important advantages. Most obviously, they allow for regional solutions, responding to specific cantonal interests and concerns. Cantonal and local

governments are closer to the people than is the federal government and are therefore more responsive to the preferences of the regional people. This is especially true under a regime of direct democracy, which allows citizens to express their preferences in cantonal and local legislation. Also, the governments of the different spheres can learn from each other. Throughout its history, Swiss federalism has acted as an inspiration for those who pondered on federal decentralization, local government and direct democracy. The Swiss constitution has often been seen as a unique experiment in bringing democracy closer to its citizens. According to a prominent Swiss scholar, Herbert Luthy, “The essential content of Swiss Federalism is not a division of competences between the federal level and the cantons, but the realization of democracy at all levels of society.” However contemporary Swiss federalism faces a challenge for which it was not designed; linguistic cleavages are increasingly replacing region, class and religion as the main source of collective identity. While this divides linguistic/cultural communities from one another, it also strengthens inner-group cohesion. As a result, cantons within the same linguistic group increasingly pool their resources and act collectively, while their relations with the cantons across the language line continue to diminish. Since *Luthy*'s times, the workings of Swiss federalism have come to reflect these ethno-linguistic communities, together with the smaller *Ticinesi* and *Romansch* speakers. A recent collection of interviews with leading figures in Swiss public life shows how deep the divisions have become. The accruing theme in this collection is the “*Rostigraben*” or “fosse” between German Swiss and Swiss Romansch.

END NOTES

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