



COMMENT: Swiss reform and the long tradition of federalism

BY RENÉ RHINOW

In Switzerland, no one has any doubt about the need for federalism and the reasons for it. It is the *raison d'être* of this unique federation of different linguistic, cultural and religious communities.

Recent and ongoing reforms are understood as an attempt to strengthen and update federalism and, in particular, to enhance the status and weight of the lower-tier members. The oft-quoted remark from 1944 of the constitutional lawyer Werner Kägi is as true today as ever: "Switzerland will be a federation or it won't be."

The famous anarchist Pierre Joseph Proudhon (1808-65) prophesied in the first half of the nineteenth century that "the twentieth century will begin the era of federations or else humanity will again launch into a thousand-year purgatory." Proudhon seems to be right if you consider primarily the second half of the twentieth century and both the trend toward federal states in the continent of Europe and the increasing decentralization of the formerly centralized unitary states.

The foundations

The history of Switzerland is marked by a process of evolution from inter-state alliances to an alliance of states and finally a federal state. Since the actual founding of the country in 1848, federalism has been a cornerstone of the Swiss political system, alongside specifically entrenched democracy. The federal system has been and continues to be seen as an adequate response to the juxtaposition and even jumble of different linguistic and cultural communities. These communities include different religious denominations, mountainous, valley and flatland regions, cities, built-up areas and rural areas, and various deeply-rooted social and political groups, all of which have had to be and will have to be accommodated in the federal state.

Federalism is also seen as a particular manifestation of the division of powers, which helps to preserve diversity and protect political, cultural, linguistic, and regional minorities in general. It is also closely related to the democratic principle since the ideal of citizen participation is more easily achieved in small geographic areas.

Like other federal states, Switzerland has two faces: integration and centralization on one side and the preservation of autonomy and diversity on the other. This diversity is fostered in a commonwealth that is already quite small, and the 26 cantons again differ quite sharply in their histories, sizes, languages, religious denominations, economies, geographies, combinations of urban and rural areas, and internal political differences. Switzerland is therefore a "land of minorities" in

which all its citizens are part of majorities and minorities, depending on the perspective, and have therefore developed sensitivity to both the need to protect minorities and the need to respect the majority.

Swiss federalism has therefore developed from the bottom up. From a historical standpoint, the member states are homelands that emerged or further congealed after the French Revolution. The development of Swiss federalism therefore bears a certain similarity to European integration, not historically, of course, or according to geographic size, but in its development of principles and systems.

Constitutional reform

On January 1, 2000, Switzerland adopted a new, updated Federal Constitution. Strengthening federalism was a major concern in the reform process. The intent, among other things, was to lend expression in the constitution to the basic pillars of the federal system in a way that was clear and easily understood by the citizenry. The guiding principle (or renewed philosophy) of federalism was, on the one hand, cooperation between the federal government and the cantons as well as among the cantons, and on the other, tripartite federalism with the three constitutional levels of the federal government, the cantons and the municipalities.

The borders of the individual states in the federation are not identical with either the open borders of the linguistic and cultural communities or the borders of the various religious denominations. The strengthened federalism of the new constitution was intended, not least of all, to alleviate the discrepancies between the linguistic, cultural and denominational borders and the various internal territorial borders with deep historical roots.

It would be misguided to divide Switzerland into simple linguistic regions. The bilingual cantons of Bern (with the southern Jura), Fribourg (Freiburg), Valais (Wallis) and Graubünden are important bridges among various parts of the country.

Cantonal autonomy and self-rule

The cantons are generally considered states because they have all the characteristics of a democracy and a political system with a Constitution, a legal system, a parliament, a government, justice, civil rights and (cantonal) political parties. Their autonomy includes organizational and financial autonomy, autonomy in the tasks they address, and (limited) "implementation autonomy," all financially supported by horizontal and vertical equalization payments.

The term "implementation autonomy" (*Umsetzungsautonomie*) appears in the Federal Constitution (compare to Art. 46) and should be preferred to "executive federalism"

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(*Vollzugsföderalismus*). In view of the considerable increase in federal responsibilities, it is more and more important to provide and guarantee the cantons enough latitude to shape the implementation of federal legislation. Implementation is therefore much more than simple execution. It includes independent shaping of policy.

“Assumed jurisdiction” of cantons

According to the Constitution the federal government carries out the tasks assigned to it by the Federal Constitution, while the cantons freely decide which tasks they wish to assume control over within the framework of their responsibilities. The new Federal Constitution lists the federal jurisdictions in a special chapter, together with the objectives and constitutional and legislative tasks (Art. 54-125).

The chapter on jurisdictions was written by borrowing at times from the old text and occasionally even adopting it word for word. However, great importance was attached to producing a text that was not too dense and that spelled out the jurisdictions, materials and objectives without a plethora of detail.

The federal government therefore controls the assignment of national tasks through its constitution. It has the competency to take over competencies (the so-called “competency competency”). The Federal Constitution therefore also contains powerful tools to help the cantons defend their interests appropriately.

Participation

Participation in the federal government, in a spirit of participatory or cooperative federalism, is especially intense in Switzerland. It can be seen in the *Ständerat* or upper chamber of Parliament, which is elected by the people within the various cantons (Art. 150, 3), as well as in the requirement for a popular majority and a majority of the upper chamber for all constitutional changes, for certain new international treaties, or for the emergency legislation suspending the constitution (Art. 140, 1). Since every new federal jurisdiction requires a constitutional change, none can be created without the approval of majorities in a majority of the individual cantons.

Member state participation also involves the consultation procedure (Art. 147), the cantonal initiative for changes to the constitution (Art. 160, 1), and the right of eight cantons to demand a popular referendum on legislation, certain international treaties, and emergency federal legislation (Art. 141, 1; optional referendum).

Switzerland has placed importance on this participatory federalism, and this importance is increasing. Various forms of so-called “conference federalism” have emerged, especially conferences of the directors of cantonal departments and – for more than ten years now – the conference of cantonal governments.

Cooperation

The multi-faceted, mutually supportive cooperation between the federal government and the cantons cannot be reduced to the old description of a “relationship of trust.” It is based on their increasingly intertwined responsibilities and the realization that effective application of federal policy requires both the participation of the cantons, acting on their own behalf, in the implementation of federal policy and mutual cooperation in the entire policy-making process, that is, from the planning stage to execution.

The Federal Constitution puts particular emphasis on the importance of dialogue and cooperative federalism. The new “partnership article” (Art. 44) obliges the federal government and the cantons to collaborate and to consider and support one another.

Tripartite structure, equality, equal treatment

The new constitution expressly entrenches the municipalities and their autonomy. It obliges the federal government to consider the possible effects of its actions on the municipalities, as well as on the cities, built-up areas, and mountainous areas (Art. 50). The federal government thereby commits itself to a state with a tripartite structure consisting of the federal government, the cantons and the municipalities. It lies within the jurisdiction of the cantons, however, to determine the structure of their own cantonal government and to demarcate the autonomy of the municipalities.

In view of the large disparities in the size of the cantons (Zurich has 1.2 million inhabitants and Appenzell-Innerrhoden 15,000 inhabitants; Basel-Stadt is 37 square kilometres in area and Graubünden 7,000 square kilometres), this constituent element is anything but obvious. The equality ideals of the constitution are not reflected, however, in the actual influence that various cantons exercise over federal policy.

The constitution contains a rule expressly stating the supremacy of federal legislation over cantonal (including municipal) legislation (Art. 49, 1). The federal government is entrusted with ensuring that the cantons observe federal law (Art. 49, 2).

The federal government is responsible for guaranteeing the cantonal constitutions, that is, approving them if they comply with federal legislation and meet certain minimum requirements in regard to democracy and the rule of law (Art. 51). It protects the constitutional order in the cantons and their continuing existence and territorial integrity (Art. 52/53).

Ongoing reforms

Switzerland currently finds itself in another stage in the reform of federalism: the redesigning of equalization payments and tasks. It is based for the most part on four pillars:

- the disentanglement of funding and tasks
- new forms of cooperation and funding between the federal government and the cantons
- substantially increased inter-cantonal cooperation
- burden-equalization and transparent financial equalization in the narrow sense, which distinguishes between the equalization of resources and burdens

In addition, the inter-cantonal legislation is supposed to be strengthened to stop what the cantons consider to be a disturbing tendency for major functions to be lost to the federal government. A government bill to this effect is currently before Parliament.

The heart and soul of federalism has been and remains federalism, as it really exists – a positive view of unity and diversity, tolerance and differences, autonomy and decentralization. Of fundamental importance is the will of the people to be together and to be different and to see this as strength.

It is incumbent on the constitution to create the conditions in which living federalism can become and remain real in the service of peace, freedom, the protection of minorities and democracy. (6)