

## Switzerland: Seeking a Balance between Shared Rule and Self-Rule

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Switzerland is a notably decentralized federation that employs several constitutional devices to resist any shift of powers to the central government. While most federal countries have shown a tendency to centralize in response to globalization, cantonal and local governments in Switzerland still control the majority of government expenditures and can influence important national policy decisions. Now the cantons are experimenting with cooperative federalism, in order to participate in the decision-making processes of the federal government.

Switzerland, a country with four official languages and two historically conflicting religious communities, adopted its federal constitution in 1848, after a civil war. It became the second federation to come into existence, strongly influenced by American federalism. The federal constitution was a compromise, between liberals promoting a unitary state and conservatives defending the former confederation. The cantons maintained their original autonomy, now as “self-rule” within a federation, and shared their sovereignty with the federation. Sensitive issues such as culture, language, education, and the relationship between state and religion remained under cantonal jurisdiction, while respecting the federal constitutional entitlement to freedom of religion. **With this system, the small consensus-driven democracy was able to develop peacefully from a rural society into a highly diversified modern state.** Even now, in a globalized economy, cantonal and local governments still control two-thirds of government revenue and public expenditures.

The federal government is responsible for national defence, citizenship rights and immigration law, civil and criminal law, economic development, currency, national transport and communication. Cantons, in turn, are responsible for important parts of public order and policing, education, welfare, health, and regional and local planning. Despite shifts in the past 150 years, the guiding principle of the distribution of powers and responsibilities remains that of “subsidiarity.” This means that tasks will only be assigned to the federal government if it can perform them more efficiently than at the cantonal order. Furthermore, the federal government should only use its powers if it can do so more efficiently than the cantonal order. The rest shall be left to the cantons to perform.

The assignment of responsibilities to different orders of government, each of which act independently, effectively prevents the concentration of state power in the hands of one institution. The division of responsibilities is known as “self-rule,” because each order of government acts independently. Article 3 of the federal Constitution contains the basic principle of self-rule in Switzerland: all areas of jurisdiction are cantonal, unless otherwise stated within the federal Constitution. For the majority of federal powers and responsibilities, the federal government does not provide the administration to put the law into action. However, federal laws are binding for all government agencies, regardless whether they are cantonal or federal. Therefore, the cantons must apply federal law, and in case of disagreement, federal law is superior to cantonal law.

Nevertheless, many federal laws expressly reserve large areas of jurisdiction to the cantons. Due to the diversity among cantons with respect to size, geography, and demographics, as well as the

multicultural character of the population, it is nearly impossible for the federal government to take the distinctiveness of each canton into account, unless it grants them broad discretion. Even within federal jurisdiction, the cantons can adopt the application of the law to their local conditions, considering local cultural distinctiveness. This is an important factor in a country with as much cultural diversity as Switzerland.

Self-rule alone is usually not enough, because of the centralizing influence of many political domains such as foreign policy, environmental protection, and security. Therefore, the cantons have another instrument they can use to control central power: “shared rule.” For certain policy decisions, the central power depends on the approval of the cantons, whether expressed directly through their governments, through popular referenda, or through other means of representation. For instance, foreign policy is a federal responsibility in Switzerland, but for important treaties, the federal government must consult the cantonal governments and take their opinions into consideration before signing an agreement. In the areas where the cantons have yielded jurisdiction to the federal government, they can effectively control the federal decision-making process through the institutions providing shared rule.

A process of centralization has gradually diminished cantonal autonomy, even though powers are not easily transferred from one order to another. In a system of semi-direct democracy, amendments to the Constitution must be approved in a referendum. Citizens are often reluctant to hand more powers to the federal government, because of greater democratic accountability at the local order than at the national order. Still, since 1874, approximately 140 constitutional amendments have shifted some of the cantons’ extensive powers to the federal order. Compared to the earlier constitutions, the Constitution of 1999 puts more emphasis on the principle of shared rule than on the principle of self-rule. Surprisingly, this has not led to a strengthening of the second chamber of parliament, in which the cantons are represented. Instead, the shared rule principle has been implemented by cantonal executive bodies taking a more direct role in the decision-making processes of the federal government. This cooperative federalism is a new and creative development, which may lead Switzerland to more effective decision making and greater flexibility.