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The co-ordination of powers in federal systems

Speakingnote Luzius Mader

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Co-ordination of Powers in the Swiss Constitution

In other countries Switzerland is often seen as a good example for a Federation. There are two reasons for this opinion: First, it is a very old federation, in fact it is the second oldest in the World, behind the United States of America. Second, its sub-Federal level still has many competencies, maybe more than most other federations. This has historical reasons:

A bit more than 150 years ago the Cantons united in a federation: historically it was not a state which split its territory into Cantons, but the Cantons themselves who decided to join forces. Since 1976, when the Canton Jura was founded, Switzerland has had 26 Cantons. They and the People form the Swiss federation - according to Art. 1 of the Constitution.

As just mentioned, even today the Cantons have many competencies. You can see the importance of the Cantons in Art. 3 of the Constitution, which states that the Cantons are sovereign in so far as their sovereignty is not limited by the Federal Constitution. They shall exercise any rights which are not transferred to the Confederation.

This Article states basically one thing: each and every time the Confederation wants to take over a new competency where none currently exists or wants to take over existing competencies of the Cantons (to make a general regulation for the whole of Switzerland), a change to the Constitution is necessary.

For such modifications of the Constitution, the approval not only of the majority of the people but also of the majority of the Cantons is needed.

Some more concrete regulations on the relationship between the Federation and the Cantons can be found in Articles 42 to 50 of the Constitution. There it is, once again, stated that the Confederation may only accomplish tasks which are attributed to it by the Constitution and that it shall assume those tasks which require uniform regulations (Art. 42). This Article also integrates the principle of subsidiarity into the Constitution: all tasks should be attributed to the lowest possible level.

An important element of Swiss Federalism can be found in Art. 44: Confederation and Cantons shall collaborate and shall support each other in the fulfilment of their tasks. They owe each other mutual consideration and support. They shall grant each other administrative and judicial assistance.

This sort of support and respect is the most important element in the success of a Federation. In Switzerland this support shows its results in the different possibilities for the collaboration of, and contact between, the Confederation and the Cantons: Some of these are provided for in the Constitution:

In the course of preparing important legislation, other projects of substantial impact and on important international treaties, the Cantons are being heard in the course of the preparation (Art. 147).

The participation of the Cantons in Federal legislation is also provided for in Article 45 of the Constitution: In cases foreseen by the Constitution the Cantons shall participate in the decision-making process at the Federal level, in particular in Federal legislation. The Federation shall inform the Cantons timely and fully of its plans and shall consult them if their interests are involved.

These two regulations give the Cantons the possibility to have their point of view put forward at an early stage in the legislative process.

An important area where the Federation and Cantons have to collaborate is in the implementation of Federal laws. In the Swiss system, the so called "Implementation-Federalism" (*Umsetzungsföderalismus*) requires that Cantons implement laws passed by the Federation: Cantons have to implement federal law in conformity with the Constitution and the statute. However, for this implementation the Confederation has to leave the Cantons as much space of action as possible, and must take their particular circumstances into account. The Confederation must also take into account the financial burden that is associated with implementing Federal laws by leaving sufficient sources of financing to the Cantons and by ensuring an equitable financial equalisation.

This "Implementation-Federalism" is very important for the autonomy of the Cantons. It gives the Cantons and Regions the possibility to take local and Regional specialities and interests into account even where they are issues that are within the competencies of the Confederation.

The Constitution also contains special regulations for the participation of the Cantons in foreign policy:

Art 55 states, that Cantons shall participate in the preparation of decisions of foreign policy which concern their powers or essential interests. They have to be informed and consulted by the Federation. Where the competencies of the Cantons are concerned, their position shall have particular weight. In these cases the Cantons are to participate appropriately in international negotiations.

This Article was introduced for a special reason: Within the past few years foreign policy has become increasingly important. More and more issues that had been regulated by the Cantons are now regulated by international treaties, which have been concluded by the Confederation. Although, in theory, hardly any competencies have been transferred from the Cantons to the Confederation, within the past few years the Cantons have lost more and more of their competencies through the foreign policies of the Confederation. This loss is now, however, compensated for by the requirement that Cantons participate in foreign policy. This participation has even been regulated in a special law.

The aim of all the regulations mentioned above is to guarantee the best possible co-operation at the different levels of the Confederation in all stages of policy making and legislation. The Cantons participate in both the preparation of a new law and the implementation of it. But to efficiently co-ordinate the different Federal levels, not only Constitutional regulations are necessary but also well-working networks between the Cantons on one hand and between the Cantons and the Federation on the other hand.

Co-ordination and Co-operation between the Cantons

For the Cantons, to keep their competencies and their influence at the Federal level, co-operation and co-ordination between them is becoming increasingly important.

The Constitution gives the Cantons the right to enter into inter-Cantonal treaties and to create common organisations and institutions. They may, in particular, join forces to fulfil tasks of regional interest (Art. 48).

The Cantons use this instrument of co-ordination of powers more and more frequently for different purposes: They make contracts to unify legislation where 26 different laws in 26 different Cantons may not be useful and practical. Agreements between all 26 Cantons are being made to avoid the need for the Federation to regulate for the whole of Switzerland. Instead of Federal regulations, inter-Cantonal agreements make it possible for the Cantons to keep their influence over a certain task and to make practical, uniform regulations at the same time.

At the Regional level, inter-Cantonal agreements allow the Cantons to make uniform regulations where neither a uniform Federal regulation nor 26 different regulations are practical. These intergovernmental agreements pay attention to Regional interests and specialities. In this context intergovernmental agreements are often used to implement Federal laws and also to influence Federal policies and Federal legislation.

A lot of contact and co-ordination between Cantons occurs through different intergovernmental institutions. These institutions have become more and more important throughout the past few years. That is why the Constitution mentions them specifically. Not only has their number increased but, in addition, their competencies have grown. This happened for the following reasons: The smallness of the Cantons often makes it very difficult or even impossible for them to fulfil their tasks. Quite often it is for the Cantons financially impossible to create their own institutions. And many of the new Cantonal tasks demand a lot of technical know-how which is not easy to find in small Cantons. It is much more efficient for several Cantons to join forces and create a common institution.

In the last years the importance of the different conferences of members of Governments has also increased. The following conferences now exist: The Conference of Cantonal Governments, several Conferences of specified ministers of the Cantons, Regional conferences of governments and Regional conferences of specified Ministers of the Cantons.

The Conference of Cantonal Governments has existed since 1993. Its aim is mainly to facilitate co-ordination between the Cantons and between the Cantons and the Confederation. It has a plenary session where all the Cantons participate with one member of Government. The board of directors of the Conference prepares the issues and the meetings of the plenary session. This office is also responsible for administrative work.

The Conference was created out of the need to bundle the power of the Cantons to influence Federal policies, especially foreign policies. At the same time it facilitates the procedure of consultation, where the Confederation has to contact the Cantons within the process of legislation and policy making.

Today the Conference of Cantonal Governments has considerable influence over Federal policies and is involved in the different phases of legislation and policy making. One example of a project where the Conference influenced Federal legislation is the new Constitution (1999).

The Conference of Cantonal Governments also had a lot of influence over the new law providing for the participation of Cantons in the foreign policies of the Federation. The Conference was an

intrinsic part of the legislative process and was able to ensure that the Cantons did not lose all their influence as a result of the international integration of Switzerland.

Beside this general Conference of Governments in Switzerland, Conferences of specified Ministers have considerable influence over Cantonal and Federal policies. Their influence over the co-ordination between the Cantons and between the Federation and the Cantons is especially strong, where specified knowledge on a subject is required. The more technical regulations become, the more important it is to co-ordinate the knowledge of the different Cantons. In this context the Conferences of specified Ministers are especially important.

Co-ordination and Co-operation between the Cantons and the Confederation

The last mentioned Conferences of Cantonal Governments and Cantonal Ministers are not only instruments to co-ordinate the policies of the Cantons but also instruments to co-ordinate the policies of the Federation and the Cantons. Members of the Federal Government are often invited to the meetings of the Conference of Cantonal Governments or the meetings of the different Conferences of specified Cantonal Ministers. This helps to guarantee a good flow of information in all directions: between the Cantons, from the Cantons to the Federation and from the Federation to the Cantons. At the same time the policies of the Federation and the Cantons are co-ordinated from an early stage.

In practice the co-ordination of the authorities of the Confederation and the Cantons happens also through various other channels. As mentioned, the Constitution obliges the Federation to consult the Cantons on several matters. In these situations the Confederation consults the Cantons as well as the Conference of Cantonal Governments. But even where the Constitution or a law does not oblige the Confederation to consult the Cantons, they are nevertheless kept informed on what happens on the Federal level and, in addition, they inform the Federal Authorities on issues which might be of interest for them. This information exchange quite often happens through informal contacts and meetings. Wherever representatives of both levels meet, information is exchanged and matters of interest to the other are discussed even where there is no institutionalised contact and no legal obligation.

Another instrument for the co-ordination of the Cantons and the Federation is the so called "Federalist Dialogue", where three members of the Federal Government and three members of the Cantonal Government meet twice a year. They discuss all issues of interest and co-ordinate their policies. These meetings help to keep up good contacts between the two levels and, in addition, are important for the preparation of legislation in areas that are important for both levels, for example the financial equalisation or the implementation of international law.

At the moment, a reform of the financial equalisation between the Federation and the Cantons is in process. With this reform not only the system of transfer of finances between the Federation and the Cantons will be simplified, but it will be a complete reform of Swiss federalism. The idea of partnership within the Confederation will be emphasised even more than it is today, the Cantons will get more options to collaborate and new instruments of co-ordination between Federation and Cantons will be introduced.

For example with the new fiscal equalisation, an instrument of co-ordination between the confederation in the process of implementation of Federal laws will be introduced: The Cantons and the Confederation will have authority to make agreements on how to implement Federal laws. They can agree on what goals to reach and for these they can set up programs for which the Confederation will provide financial support. With this new instrument, the concept of partnership within the Federation, of co-operation rather than competition between the different levels, will be emphasised even more than it is today.

Co-ordination between all three levels of powers (Confederation, Cantons and Communes)

But there is another level in the Swiss Confederation beside the Federation and the Cantons: Art. 50 of the Constitution also mentions communes and municipalities. However, the rights of the municipalities don't come out of Federal law. The Cantons decide themselves how they want to organise their territory and how much autonomy they want to give their communes. In reality, all the Cantons have divided their territory into communes.

Art. 50 of the Constitution states first that the Cantons decide on this themselves but adds, that the Federation must respect the interests of the communes and cities. When making legislation, the Federation must give just as much consideration to these issues as it gives to the interests of the Cantons. In a special position here are the bigger Swiss cities. They often have to deal with problems of national interest. Obviously these problems must also be addressed by the Cantons and the Federation who help the cities to solve these problems by giving them financial compensation for the expenses resulting from their special circumstances.

Considering the increasing importance of problems of national interest within the areas and competencies of the bigger cities, especially for traffic and social issues like drugs, unemployment and the integration of foreign immigrants, a new Conference has recently been founded. This three-level-Conference of representatives from Cities, Cantons and the Federation comes together to discuss the issues mentioned above. It is intended to guarantee the best possible co-ordination of the three levels of power in the Swiss federation.

Result

As a result of all the regulations which deal with the co-ordination of powers within its Federal system and its practice of co-operation, Switzerland has a big, but quite complicated network of contacts between the three levels of the Swiss confederation. For a person who is not familiar with the Swiss system it might be almost impossible to see through it. In addition, the requirement that all Federal levels be consulted, may in many cases make the system quite slow. But overall it is a system that functions well because in a country like Switzerland, where people with different languages, cultures and religions have to live together in a small area, the search for compromises between and within all the levels is essential for the survival of the country.